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Crl.A. Nos.906/2019, 881/2019 & 279/2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>RESERVED ON</i>	<i>24.04.2025</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 Nos.906 of 2019, 881 of 2019 & 279 of 2020

Subha @ Subhakar .. Appellant in Crl.A. No.906/2019 – A1

Premkumar
Mathivannan .. Appellants in Crl.A. No.881/2019 – A2
and A3

Anthony Simson .. Appellant in Crl.A. No.279/2020 – A4

Vs.

State rep by
Inspector of Police
Pollachi West Police Station
Coimbatore District
Crime No.168/2014 .. Respondent in all Criminal Appeals

Prayer : Criminal Appeals filed under Section 374(2) of the Criminal Procedure Code against the judgment of conviction and sentence passed by the V Additional District Judge, Coimbatore dated 28.11.2019 made in S.C. No.120 of 2015 and set aside the same.



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Crl.A. Nos.906/2019, 881/2019 & 279/2020

For Appellant : Mr.R.John Sathyan, Senior Counsel
For Mr.B.Sundarapandian

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

COMMON JUDGMENT

N.SENTHILKUMAR, J.

Challenging the judgment of conviction and sentence passed by the learned V Additional District and Sessions Judge, Coimbatore dated 28.11.2019 made in S.C. No.120 of 2015, the accused A1 to A4/appellants herein, have preferred these criminal appeals.

2. The learned V Additional District and Sessions Judge, Coimbatore in S.C. No.120 of 2015, has convicted the appellants and sentenced them as follows:-

<i>Accused/Appellant</i>	<i>Offence</i>	<i>Sentence</i>
<i>A1/ Appellant in Crl.A. No.906 of 2019</i>	<i>Section 364 IPC</i>	<i>7 years rigorous imprisonment and a fine of Rs.5,000/-, in default to undergo simple imprisonment for two months</i>



	Section 342 IPC	<i>One year rigorous imprisonment and a fine of Rs.1,000/-, in default to undergo simple imprisonment for one month;</i>
	Section 302 IPC	<i>Life imprisonment and a fine of Rs.5,000/-, in default to undergo simple imprisonment for two months</i>
A2 to A4/ Appellants in Crl.A. Nos.881/2019 & 279/2020	Section 342 IPC	<i>One year rigorous imprisonment each and a fine of Rs.1,000/- each, in default to undergo simple imprisonment for one month each;</i>
	Section 302 r/w 34 IPC	<i>Life imprisonment to each one of the accused and a fine of Rs.5,000/- each, in default to each accused has to undergo simple imprisonment for two months</i>

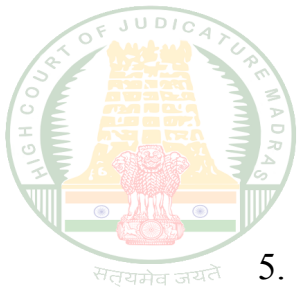
The trial court ordered to run the sentences concurrently.

3. The case of the prosecution is that on 29.06.2014 at about 3.45 p.m, near Bhathirakaliamman Kovil Street at Pollachi, closer to Vasantha Mahal, when one Guruvan @ Guru (PW11), Jaleel (PW8) and the deceased were talking along with Ragupathy (PW12), the accused A1 to A4, picked up a



quarrel with the said Raghupathy, examined as PW12, which was witnessed by PW11 and PW8. The deceased along with PW11 and PW8, pacified the accused and PW12. A1 threatened the witnesses, immediately A2 to A4 picked up a quarrel with the witnesses and thereafter fled the scene of occurrence. Angered over the quarrel picked up by the deceased PW8 and A2-Prem Kumar took the deceased in a motorcycle bearing Registration No.TN-37 AP-0711 to the room of A5 situated at Pollachi West Police Station Campus and committed murder of the deceased by inflicting injuries all over the body of the deceased. A1 had previous enmity with the deceased and thereby wanted to eliminate the deceased. In furtherance of that enmity, with a common intention to eliminate the deceased, all the accused joined together and committed the murder of the deceased.

4. To prove the prosecution case, the prosecution had examined 22 witnesses as PW1 to PW22, marked 43 documents as Exs.P1 to P43 and produced 14 materials objects as MO.1 to MO.14. Upon perusing the evidence on record and the submissions made by the parties, the trial court convicted and sentenced A1 to A4 as mentioned supra and had acquitted A5 to A10 of all the charges.



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5. PW1 is the Village Administrative Officer to whom A1 had given extra judicial confession. PW2 is the estranged wife of the deceased, had narrated the facts and had not stated anything about the involvement of the accused persons. PW3 is the elder brother of the deceased and had narrated the occurrence. PW4 is the nephew of the deceased, who had identified the body of the deceased. PW7 and PW8 were examined to establish that the deceased was seen alive with the accused. However, PW7 and PW8 had turned hostile during trial. PW12 was present at the time of A1 picking up quarrel with the deceased and PW12 and PW8 had spoken about the motive of the accused.

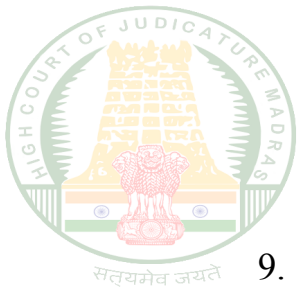
6. Mr.S.John Sathyan, the learned senior counsel appearing for the appellants/A1 to A4 primarily contended that the case of the prosecution is that after committing the murder of the deceased on 29.06.2014, A1 had met PW1, the Village Administrative Officer at Pollachi and had given confession statement. The learned senior counsel contended that the confession statement was written by PW1 and at the bottom of the statement, the first accused was made to affix his signature. The sum and substance of the argument of the learned senior counsel for the appellants is that the extra judicial confession of A1 cannot be taken into consideration, as the VAO belonged to a different



village and an unknown person to the accused, therefore, there was no explanation by the prosecution as to why the first accused had chosen to prefer an extra judicial confession to PW1.

7. The learned senior counsel further contended that PW1 was a planted witness to prove the case of the prosecution and there was no rhyme for the first accused to give a statement to PW1. The learned senior counsel further submitted that during cross examination, PW1 has stated that immediately after the occurrence, A1 had handed over MO1 – Knife to PW1, which was wrapped by him in a newspaper and handed over to the police.

8. Per contra, in the evidence of PW17, the Inspector of Police, during her cross examination had admitted that MO1 was wrapped in a plastic cover. The contradictory statements of PW1 and PW17 about MO1-knife wrapped in newspaper as per PW1 and it was wrapped in plastic cover, as per PW17, certainly creates a doubt with regard to recovery of MO1. In the absence of any clarification with regard to such crucial evidence, the prosecution had failed to establish the recovery of MO1.

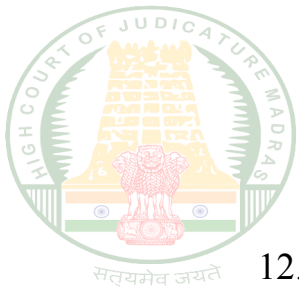


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9. According to the prosecution, the accused and the prosecution witnesses were known to each other prior to the occurrence. PW11 and PW8 were talking along with the deceased when A1 picked up a quarrel with them. However, none of the witnesses had seen the occurrence and the prosecution proceeded as a case of circumstantial evidence.

10. The learned senior counsel appearing for the appellants would point out that the factum of FIR reaching the court with a delay of one day from the time of registration of FIR, assumes importance. There was no explanation for the delay of the complaint/FIR reaching the court, which was marked as Ex.P20. It is to be noted that the FIR was registered on 29.06.2014 in Crime No.168 of 2014. The complaint is nothing but a statement given by the Village Administrative Officer at about 7.30 p.m, which is as per the prosecution, the statement given by A1 to PW1.

11. The learned senior counsel pointed out that the occurrence had taken place at the house of A5 and the body was recovered from the said house. However, the trial court had acquitted A5 to A10 for lack of evidence.



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12. Per contra, the learned Additional Public Prosecutor vehemently contended that the evidence of PW1, who is the Village Administrative Officer attached to Pollachi village is a substantial piece of evidence. A1 had given him a statement narrating the sequence of events for committing the murder of the accused and had handed over MO1, knife with blood stains which was wrapped in a newspaper.

13. PW1 had recorded the statement, which according to the prosecution, has to be considered and treated as a confession statement of A1. He further contended that though the accused belongs to Pollachi, there is no restriction for A1 to surrender before PW1 and give a statement. It is the choice of A1 to surrender and give a statement to PW1, the law does not prohibit the accused from doing so. It is not a mandate for the accused to approach only the concerned Village Administrative Officer in whose jurisdiction the accused resides. The prosecution had established the case with regard to MO1 which contained B+ve blood group which is same as that of the deceased and to establish the same, the biological report (Ex.P16), serology report (Ex.P17) and blood grouping report (Ex.P18) were marked. The said reports would clearly



show that the blood belonged to the deceased and the blood stain available in MO1, knife is as that the deceased.

14. PW7 and PW8 were examined by the prosecution to establish that the deceased was seen along with the accused prior to the occurrence. However, PW7 and PW8 had turned hostile and there is no evidence to establish the theory of deceased last seen alive with the accused prior to the occurrence. The only available evidence is the recovery of MO2 to MO13, blood stained clothes of the deceased as well as the first accused. The seizure mahazar Ex.P26 speaks about the blood stained clothes collected in the scene of occurrence. Ex.P28, Ex.P30, Ex.P32 and Ex.P34 are admissible portion of confession statement given by A1 to A4. Ex P38 is the admissible portion of confession statement given by A10. Exs.P10 to P15 are signature of PW13 in the confession statement given by A5 to A10.

15. The evidence of PW20, the doctor, who had conducted post-mortem of the deceased, would clearly establish the injuries sustained by the deceased. There were 14 stab injuries found all over the body of the deceased. In the post-mortem report, which was marked as Ex.P40, the doctor had opined that the



death had occurred due to shock and haemorrhage and multiple stab injuries and the death would have occurred 12 to 24 hours prior to autopsy. Viscera Report, which was marked as Ex.P41, would reveal that the deceased had consumed alcohol.

16. Admittedly, the case of the prosecution is based on circumstantial evidence and the court has to examine whether the chain of events commencing from the deceased last seen alive together with the accused at the nascent stage of crime till the recovery of the material objects, which were used for the commission of offence, form a chain pointing out the guilt of the accused. When PW7 and PW8 were examined by the prosecution to establish the last seen alive theory, they had turned hostile and where there are no other witnesses to depose regarding the last seen alive theory, the case of the prosecution cannot be considered.

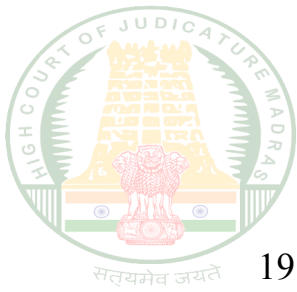
17. The only available evidence is the admissible portion of the confession statement given by A1 to A4, which were marked as Exs.P28 to P34. It is not in dispute that the law does not prohibit the extra judicial confession statement given to VAO. Whether the VAO to whom the statement



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of extra judicial confession given by the accused belongs to the village where the accused actually resides or the witnesses reside is totally immaterial. It is to be noted whether extra judicial confession given by the accused to PW1 stands the test of scrutiny of *bona fide* and the preponderance of probabilities is in favour of the accused or in favour of the prosecution. When the prosecution had failed to give any explanation as to why A1 had given an extra judicial confession which was treated as Ex.P2 as the confession statement or a statement of confession, which has to be considered as a confession statement not to the police and to the officer does not hit by Section 25 and 26 of the Indian Evidence Act.

18. The extra judicial confession given by A1 to PW1 will not make the prosecution case a genuine one even when the signature of the accused found in the bottom of his statement and it is for the prosecution to establish the circumstances which point out the guilt against the accused. The guilt against the accused should be established by producing witnesses and the documentary evidences collected during investigation and all put together should point out the guilt as against the accused persons.

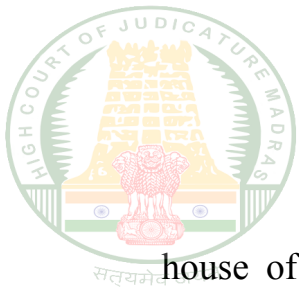


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19. The court has to bear in mind in the case of circumstantial evidence, from the occurrence where the accused was last seen alive, till the recovery of material objects which was used by the accused as against the deceased to commit the crime and the other chain of circumstances should be pointed out without the break in the chain. It is evident that the prosecution had miserably failed to prove that the accused was seen together along with the deceased prior to the occurrence and the recovery based on the confession statement or a statement alleged to have been voluntarily given by A1 and the recovery of MO1 will by itself will not establish the case of the prosecution.

20. The discrepancy with regard to the material used for wrapping the MO1, knife, which has been used for the crime throws a doubt with regard to the genuineness of recovery of MO1 alleged to have been used by A1. The corroboration of blood stain in MOs.1 to MO13 as that of the deceased and the accused by itself is not sufficient to come to the conclusion that the accused persons have committed the offence.

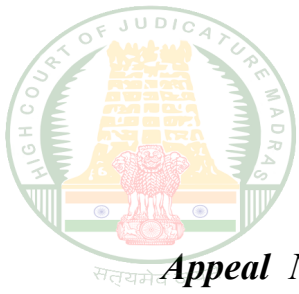
21. Another significance attached to this case is that the place of occurrence is the house of A5, the body was found in a pool of blood in the



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house of A5, however, the trial court has acquitted A5 to A10 for want of evidence and in the absence of any ocular evidence to establish the case, the medical evidence coupled with the blood stained material objects is one of the incriminating circumstances against the accused. However the only concrete material available to the prosecution is that the extra judicial confession given to PW1 and the complaint of PW1 which was marked as Ex.P2 and the signature affixed by the accused in the said statement. Though it cannot be disputed that the signature of the accused is one of the incriminating circumstances against A1, that by itself will not prove that the accused has committed the crime in the absence of any effective corroboration for the reason that the extra judicial confession is a weak piece of evidence. Unless and until there is some corroboration for extra judicial confession, conviction cannot be sustained. There are certain circumstances against A1 however, there is no chain of events pointing out the guilt against the accused to establish that A1 to A4 had committed the crime.

22. In this regard, it is useful to rely on 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, wherein, the Hon'ble Supreme

Court has held as under:

"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

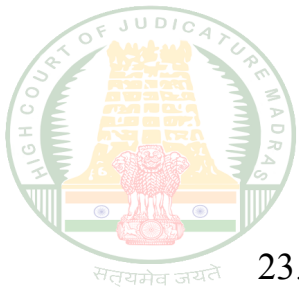
(iv) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused but should be inconsistent with his innocence. In other words, the circumstances should exclude every possible hypothesis except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



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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 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.*



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23. In view of the settled law and the facts and circumstances stated above, we are inclined to allow these appeals. Accordingly, all the three criminal appeals are allowed and the judgment of conviction and sentence imposed by the learned V Additional District and Sessions Judge, Coimbatore dated 28.11.2019 made in S.C. No.120 of 2025, is hereby set aside. The appellants can be set at liberty forthwith, if their presence is not required in connection with any other case. Fine amount, if any, paid by them shall be returned to them forthwith.

[M.S.R., J.] [N.S., J.]
18.06.2025

Asr

Index : Yes

Neutral citation : Yes

To

1.The V Additional District and Sessions Judge, Coimbatore

2. Inspector of Police
Pollachi West Police Station
Coimbatore District
Crime No.168/2014

3.The Superintendent of Prisons,
Central Prison, Coimbatore

4.The Public Prosecutor, High Court, Madras



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

Crl. A. Nos.906 & 881 of 2019
and Crl.A. No.279 of 2020

Dated : 18.06.2025