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Crl.A.No.40 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE M. JOTHIRAMAN

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N.Prasath

... Appellant

Vs.

State represented by
The Inspector of Police,
E-1, Sholinganallur Police Station,
Coimbatore District

... Respondent

Criminal Appeals filed under Section 374(2) Cr.P.C., praying to set aside the judgment of conviction and sentence, dated 31.07.2018 in S.C.No.206 of 2016 on the file of the learned III Additional District and Sessions Judge at Coimbatore.

For Appellant : Mr.P.Muthamizh Selvakumar

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor
assisted by Ms.M.Arifa Thasneem



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JUDGMENT

(Judgment was delivered by **N. SATHISH KUMAR, J.**)

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Aggrieved over the judgment of conviction and sentence, dated 31.07.2018 in S.C.No.206 of 2016 on the file of the learned III Additional District and Sessions Judge at Coimbatore, A1 has filed the instant criminal appeal. The accused A1 was acquitted under Sections 120(B) read with 302 of IPC and 364 of IPC, however, was convicted and sentenced by the trial Court as follows :

<i>Accused</i>	<i>Conviction</i>	<i>Sentence</i>
A1	Section 302 IPC	Life imprisonment and fine of Rs.5,000/- in default, to undergo six months simple imprisonment

2.The case of the prosecution is as follows :

2.1.PW1 Mahendran is the brother of the second accused and brother in law of the deceased Pugalendi. Ex.P1 information to the police was initially given by A2. The deceased Pugalendi and the second accused are husband and wife. The 1st accused had illicit relationship with the 2nd accused who were working in the same place. On knowing the same, the deceased had warned her wife and he had also warned the 1st accused that he should not come to his home and talk to his wife. Enraged by the objections



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made by the deceased, the second accused had called the 1st accused over phone and instigated him to eliminate her husband the deceased. The 1st accused Prasath with an intention to murder the deceased, on 07.02.2016 bought poison named “Monostar” and had mixed the same with brandy and had took the deceased to GV Residency Park and both had consumed liquor brought separately at TASMAC bar and then the 1st accused had attempted to administer the poisoned brandy to the deceased. At that time, the deceased had picked up quarrel with the 1st accused regarding the 1st accused's affair with his wife and had refused to consume the poison mixed liquor. Therefore, the first accused changed his plan and decided to eliminate the deceased by using knife. Then the first accused left to buy a knife at Sowripalayam Balaji Steel house and brought the deceased to the scene of occurrence and slit the neck of the deceased and murdered him.

2.2. On the basis of the complaint given by A2, an FIR (Ex.P1) came to be registered by the E-1, Sholinganallur Police Station (P.W.19) under Section 174 of CrPC.

2.3. After receipt of the FIR (Ex.P1), P.W.23 (Investigating Officer)



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went to the place of occurrence and prepared the Observation Mahazar (Ex.P2) in the presence of witnesses and Rough Sketch (Ex.P20) and also recorded the statements of the witnesses. The accused surrendered on 10.02.2016 before PW6/VAO and confessed the crime. PW6 prepared a report and took the accused No.1 to the police station and submitted the report to the Investigating Officer/PW23 under Ex.P5. Based on the confession, on the same day, he recovered sand, without blood and with blood stain from the place of occurrence, conducted inquest over the body and prepared Inquest Report (Ex.P21), sent request for conducting postmortem, after conducting postmortem handed over the body to the relatives of Pugalendi and recovered the blood stained dress materials from the dead body. Investigating Officer arrested the accused Prasath in the presence of witnesses and obtained Confession Statement from him and recovered the material objects produced by him and altered Section 174 of CrPC to 120(b) read with 302 of IPC and the alteration report is marked as Ex.P22.

2.4.P.W.18 (medical officer) conducted autopsy over the body of the



deceased and issued postmortem certificate (Ex.P10) opining that the death of the deceased was due to cut injury in the neck and corresponding internal injuries and death would have occurred 12 to 24 hours prior to autopsy. Postmortem report is marked as Ex.P10 and the final opinion as Ex.P11, Biological report is marked as Ex.P12 and Toxicological report is marked as Ex.P13.

2.5.The Investigating Officer, after completing the investigation, laid final report against the accused A1 and A2 for the offences under Sections 120(B), 364 and 302 of IPC against the first accused and Section 120(B), 364, 302 read with 109 of IPC against the A2 in P.R.C.No.14 of 2016 before the learned Judicial Magistrate No.3, Coimbatore.

3.On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the learned Principal Sessions Judge, Coimbatore as contemplated under Section 209 of CrPC in S.C.No.206 of 2016 and was made over to the learned III Additional District and Sessions Judge, Coimbatore, for trial.

4.The trial Court framed the charges for the offence against the



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accused A1 under Sections 120(B), 364 and 302 of IPC and against A2 under Section 120(B), 364, 302 read with 109 of IPC. When questioned, the accused pleaded “not guilty”.

5.To prove the case, the prosecution has examined as many as 24 witnesses as P.W.1 to P.W.24 and marked Exs.P1 to P22 and produced M.Os.1 to 14.

6.The trial Court, after appreciating the oral and documentary evidence and materials on record, by judgment dated 31.07.2018, found A1 guilty of the offences under Section 302 of IPC and thereby, convicted and sentenced the A1 as stated *supra* and acquitted A2 from all the charges.

7. Challenging the conviction and sentence, the instant appeal is filed by A1/appellant.

8. The learned counsel for the appellant submitted that this case is



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based on circumstantial evidences, the entire circumstances has not been proved and the circumstances relied upon by the prosecution is highly doubtful and the same has been created only for the purpose of the case.

9. Whereas, the learned Additional Public Prosecutor appearing for the State, would submit that based on the extra judicial confession by the A1 to the PW6, PW6 took the accused to the police station and submitted Ex.P5, the Investigating Officer enquired him, accused confessed the crime and the confession was recorded, based on the information given by the accused, material objects were recovered. According to him, recovery includes dresses of the deceased and A1 and through the Biological Report and Serological reports, Exs.P17 to P19 clearly proves the fact that the deceased blood group were found in the dresses of A1, therefore, it is his contention that the Trial Court has considered all these facts and clearly found that the accused A1 guilty. Hence, he would submit that the judgment of the trial Court does not require any interference.

10. We have perused the entire materials available on record.



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11.The prosecution has relied on the following circumstances:- a. motive, b. last seen theory, c. extra-judicial confession recorded by PW6 dated 10.02.2019, d. Discovery Statement and recovery of the material objects, viz., M.O.1 to M.O.8.

12. As far as the circumstantial evidences are concerned, the entire circumstances relied upon by the prosecution must be complete so as to not leave any hypothesis unproved other than the guilt and there must be complete chain and the circumstances so as to convict the persons. As far as the motive aspect is concerned, it is the case of the prosecution that there was illicit relationship between A1 and A2 which was objected by the deceased Pugalendhi who is the husband of A2. In this regard, on careful perusal of the evidences of PW1, who is none other than the brother of A2 and brother in law of the deceased and PW2, who is the son of the deceased as well as A2; the evidences of PW1 and PW2 clearly indicate that A2 was residing very next to the house of the PW1. His evidence clearly indicate that there was some dispute between the deceased and A2, when they



decided to construct a toilet in her house with the help of A1 on 07.02.2016, he never stated anything about the alleged illegal connection between the A2 and A1. Similarly, the evidence of PW2 also does not indicate any such illicit relationship between the A1 and A2, therefore, the alleged motive as projected by the prosecution has not been established.

13. PW3/neighbour of the deceased though was examined to prove that there was a relationship between A1 and A2, his evidence also does not prove that there was illegal intimacy. He has clearly admitted that he does not know anything directly about any of such connection. PW4/neighbour of the deceased has stated as if the deceased had told him that since A1 is visiting his house, he is not happy with that; except that, he has not stated anything.

14. When A2 was in the house on 08.02.2016, the police informed A2 that her husband is found dead near the Ullipalayam GV Residency vacant site, thereafter, A2 has filed a complaint. To prove the so-called last seen theory, PW7, PW8, PW9, PW10 were relied upon by the prosecution. PW7



has deposed that when he was working as watchman at GV Residency along with Raju and Senthil Kumar/PW12, on 07.02.2016 at 9.30 pm, A1 and deceased were sitting on the slab and consuming alcohol and immediately, they sent them out, next day, he heard that one person was dead, therefore, the police has examined him and sent him. Thereafter, his statement was recorded only on 11.02.2016. It is relevant to note that there was no previous acquittance between the accused and the security/PW7. PW7, in his cross examination clearly stated that he never stated he knew the accused and he saw him only on that day. In such case, the police at-least to prove his credibility, ought to have conducted identification parade. Further, his evidence clearly indicates that CCTV cameras were available in the vicinity, however, the prosecution has not made any attempt to seize the CCTV camera.

15. PW8 would say that while he was returning from Sowripalayam near GV Residency at 10 pm on 07.02.2016, A1 was standing near bridge panicked, and he also has seen the blood stain on his pant. Though, Investigating Officer claimed to have examined PW8 on 11.02.2016, the



statement has reached to the Court only on 24.05.2016. The delay has not even explained. The dead body was found on very next day, i.e., 08.02.2016 and if really, PW8 has seen the deceased in the night, that too, with the blood stain in his dress, normal conduct of the PW8 was to inform somebody, at-least to his friends. He has not even informed anyone. These facts also create serious doubt and sending the statement of PW8 after inordinate delay gives rise to inference that these evidences are created later in order to somehow or other complete the chain of evidence. We are inclined to say so since the other materials are very much available to support our inference.

16.PW9 would depose that on 07.02.2016, while he was at his shop near Sowripalyam at 10pm, the accused came to purchase M.O.7 and accordingly, he sold the steel knife. It is relevant to note that when the evidences of PW8 and PW9 are carefully seen, it would indicate that these evidences are artificially created. PW9 stated that at about 10 pm, accused has visited the shop and purchased the knife only to eliminate the deceased later, whereas, it is the evidence of PW8 that he has seen the accused with blood stain on his pants at 10 pm. These contradictory statements create



serious doubt on the prosecution witnesses.

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17. PW10 is examined to prove as if the accused has purchased some monostar pesticides on 06.02.2016 itself in order administer the same to the deceased and PW11 has deposed that there was some relationship between the deceased, A1 and A2. Be that as it may, when the last seen theory relied upon by the prosecution by way of the above witnesses, we are of the view that the same is not sufficient to show that the accused was actually in the company of deceased, therefore, we are unable to rely upon their evidences as stated supra.

18. Further, to complete the chain of the last seen theory, the time gap between the point of time when accused and deceased seen alive and dead body must be short and there should not be any long time gap. A long time gap weakens the theory because it allows for other people to have intervened; therefore, the prosecution must supplement the "last seen" evidence with other pieces of evidence, such as motive, forensic reports, and witness testimony, to create an unbroken chain of circumstantial evidence



that points exclusively to the accused's guilt. PW8 and PW9 evidences clearly falsify the prosecution story and further, no CCTV footages whatsoever recovered which is admittedly available as per the evidence of PW7.

19. The other circumstances relied upon by the prosecution is the extra judicial confession under Ex.P4 recorded by PW6. PW6 has deposed that while he was in office, the accused voluntarily came to his office, confessed his crime to PW5 and the confession statement was recorded by PW6 and the accused was handed over with the special report to the Investigating Officer/PW23. Though PW6 said to have recorded the so-called extra judicial confession under Ex.P4, when Ex.P4 carefully perused, absolutely, there is no reference whatsoever with regard to the time, when the accused appeared before the VAO, whereas, only in the evidence of PW6 had deposed that at about 9 am on 10.02.2016 accused appeared and he had recorded the confession and completed at 12.30 pm. In the entire Ex.P4, there is no reference with regard to the time when the accused had appeared and the time when the recording of confession completed. According to the PW6, he has handed over the accused along with the report before the

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Investigating Officer/P.W.23. Thereafter, Investigating Officer recorded the confession and effected seizure of all the material objects in pursuance to the disclosures made by the accused.

20. No doubt, M.O.5, so-called jeans pant said to have been seized by the accused contain the blood group of the deceased, such materials in view of this Court, if properly collected and there was no doubt in seizing such materials that will give one of the clinching circumstances. According to the prosecution, the Investigating Officer came to know the crime only after the extra judicial confession recorded by PW6 on 10.02.2016. The very alteration of Section 302 of IPC from 174 CrPC was made pursuant to such confession. It is relevant to note that it is the specific case of the prosecution that the accused appeared only on 10.02.2016 at 9 am before the PW6, thereafter, everything is unearthed. On careful perusal of the evidences of PW1 and PW2, we are of the definite opinion that the so-called alleged extra judicial confession is nothing but an afterthought. The evidences of PW1 and PW2 clearly shows that the A2 was taken to the police station at 6.30 am morning on 09.12.2016 itself. Thereafter, PW1 and PW2 along with others



went to the police station on the very same day at 9.30 am. When the PW1 and PW2 went to the police station, A2 was already in the custody of the police station, i.e., on 09.02.2016 which has been clearly spoken by PW1 and PW2, therefore, the accused appearing before the VOA/PW6 on 10.02.2016 and giving confession is highly doubtful. The very recording of the confession, viz., on 10.02.2016 is doubtful while the accused was already in the custody of the police on 09.02.2016, later, the alleged confession and recovery is highly doubtful. Therefore, merely, because the so-called jeans of the accused contains the blood group of the deceased, we are not in a position to accept the prosecution case, the possibility of smearing the blood in the dress of the accused after taking the accused into custody cannot be ruled out.

21. Further theory of the prosecution that the accused has also boought monostar pesticides to administer the same to the accused is concerned, though he has mixed with the alcohol, the deceased did not consume that alcohol, in that case, at-least in the place of occurrence, when verified by the Investigating Officer, the traces of the so-called pesticides



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could have been seen. At any event, when the very extra judicial confession is afterthought and the evidence of the prosecution witnesses are also highly doubtful, the trial Court mechanically passed an order of conviction, relying upon the evidence of the prosecution witnesses, without appreciating the entire evidence to find out the whether those evidences are reliable or conviction can be made based on such evidence. Therefore, we are of the view that prosecution has not established all the circumstances to maintain the conviction.

22. In view of the above findings, we are of the view that the prosecution has not established the guilt of the accused beyond reasonable doubt. Therefore, we are inclined to extend the benefit of doubt to the accused/appellant.

23. In such view of the matter, this Criminal Appeal stands allowed and the judgment of the trial Court dated 31.07.2018 in S.C.No.206 of 2016, is set aside, and the accused is acquitted of all the charges framed against him. Fine amount, if any, paid by the appellant/accused, shall be refunded to



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them. Bail bond executed by the appellant shall stand discharged.

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(N.S.K., J.) (M.J.R., J.)
27.10.2025

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Neutral Citation : Yes / No

To

1.The III Additional District and Sessions Judge
Coimbatore

2.The Inspector of Police,
E-1, Sholinganallur Police Station,
Coimbatore District

3.The Public Prosecutor,
High Court, Madras.



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and
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