



Crl.A(MD)No.69 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.02.2025

Pronounced on : 10.03.2025

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

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and

Crl.M.P(MD)No.1902 of 2025

Venkatesan

.. Appellant/ sole accused

Vs.

State rep. through
The Inspector of Police,
Chinakovilankulam Police Station,
Sannkarankoil Taluk limit,
Tirunelveli District.
(Crime No.83/2015)

.. 1st Respondent / Complainant

PRAYER: Criminal Appeal is filed under Section 372 of the Code of Criminal Procedure, against the judgment dated 20.12.2022 in S.C.No.686 of 2016 on the file of the learned Sessions Judge, Mahila Court, Tirunelveli District.



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For Appellant : Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu

For Respondent : Mr.E.Antony Sahaya Prabhakar
Additional Public Prosecutor

JUDGMENT

Dr.G.JAYACHANDRAN, J.
and
R.POORNIMA, J.

The appellant/Venkatesan is the sole accused in S.C.No.686 of 2016 (on the file of Learned Mahila Judge, Tirunelveli). The Court below on appreciation of evidence placed by the prosecution, convicted the appellant for offences punishable under Section 498-A IPC and 302 (two counts) IPC.



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2. The sentence imposed for the above offences are:-

Section 498A IPC : 2 years RI and Fine Rs 5000/-.

In default, 2 months SI.

Section 302 IPC (2 counts): Life imprisonment and fine of Rs.10,000/- each. In default, 4 months SI.

Facts of the case:

3.1. On 30.04.2014, Venkatesan (Accused) and Esakkiammal (deceased) got married and they both were living in Thalavaipuram along with the parents of the Accused. On 26.01.2015 a female child Divya (deceased) born to them. The accused suspected the paternity of the child and used to quarrel with his wife. On 05.07.2015, Essakiammal called her mother Sudalaivadivu (PW-1) at about 9.30 p.m and told that her husband is suspecting her and frequently beating her. PW-1 also heard the deceased shouting. Next day morning at about 6.00 am. Kaliyan, the father of the accused called PW-1 and informed that Venkatesan killed his wife Esakkiammal and the child Divya.



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3.2. On hearing the news, PW-1 went to Thalavaipuram from Kalakadu and saw the body of Essakiammal badly injured all over her body and the child Divya. PW-1 went to the Police Station and gave written complaint (Ex.P-1) to the Anthony Savarimuthu-Sub Inspector of Police (PW-23), who registered FIR at 10.30 a.m and forwarded a copy to the Judicial Magistrate. The Inspector of Police Sankareswaran (PW-24) took up the investigation. Went to the scene of crime and prepared observation mahazar (Ex.P-3), sketch (Ex.P-25) and the Inquest (Ex.P-26). He sent the body of Essakiammal and baby Divya for autopsy through Police Constable with request and obtained the respective post mortem from doctors concern. On 20.07.2015, the accused was arrested near Thalavaipuram Aavin Milk Bus Stop. On his voluntary confession in the presence of VAO-Perachiselvi (PW.11) and Village Assistant Madasamy, the knife used in the crime, two wheeler and the blood stained dresses were recovered under Mahazar from a bush near Thalavaipuram, Aavin plant. The blood stained materials were sent for serology test and found it contain human blood Group-A.

3.3. The prosecution totally relied on 24 witnesses. Marked 28 exhibits and 15 material objects.



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3.4. The trial Court relied the evidence of PW-1, PW-2 and PW-8 who are the mother, sister and father of the deceased Essakiammal respectively, to hold that the deceased Essakiammal was facing cruelty at the hands of the accused. The photographs marked as Ex.P-19 series and CD marked as M.O-14 through PW-19 prove the homicidal violence on the victims. The death of Essakiammal due to haemorrhage caused by multiple injuries and the death of the child Divya by drowning held to be proved through the post-mortem reports Ex.P-26 and Ex.P-27.

3.5. The accused was living along with his wife and 6 months old daughter in the same house. His explanation that he along with his parents went to Thiruchendur on the fateful night and came to know about the incident on the next day from one Madasamy, not supported by probable evidence. The minor contradictions and doubt about the time of death, arrest and recovery were held by the trial Court as not fatal to the prosecution, in view of the reliable evidence of PW-1, PW-2, PW-7, PW-8 and uncontroverted evidence of PW-11.



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4. Being aggrieved by the judgment of conviction and sentence, the appeal is filed on the following grounds:-

a) According to the prosecution, the occurrence happened on 06.07.2015 before 6.00 am. It was reported to the police by PW-1 at 10.30 am. The FIR reached the Judicial Magistrate only at 3.00 p.m with delay of four and half hours. The unexplained delay is fatal to the prosecution.

b) It is admitted by the prosecution witnesses that the service of the sniffer dog was engaged by the police. The report regarding sniffer dog is suppressed by the Investigating Officer to save the real assailants. The fact showing arrest of the appellant 15 days after the occurrence shows that he was falsely implicated in the crime.

c) The prosecution failed to prove the foundational facts beyond reasonable doubt. While so, the trial Court ought not to have shifted the burden on the appellant to draw adverse inference rejecting the plea of alibi.

d) There is no evidence to show the accused neglected to care his wife and child. No complaint earlier to show he caused



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cruelty to them. The testimony of PW-1 and PW-2 that Esakkiammal called over phone the previous day and complain about cruelty is an after thought without any evidence. The prosecution had not collected the call details of the deceased and PW-1 to substantiate the charge against the accused.

e) According to the prosecution, the witnesses saw Essakkiammal with burn injuries and burned bedsheet was recovered. No investigation conducted on this aspect. The post-mortem report is silent about burn injuries. The post mortem doctor PW-12 had admitted that the multiple injuries found on the body of Essakkiammal might have caused by different weapons. Therefore the trial Court ought to disbelieve the prosecution in entirety.

f) Being a case of circumstantial evidence, the link in the chain ought to be intact and not broken. In the instant case, motive not established. No witness to prove the accused was seen at the place of occurrence at the relevant point of time. PW.3-Mariammal, PW.4-Ramathal, PW.5-Gurusamy, PW.6-Marisamy who were supposed to speak about the last seen together with the



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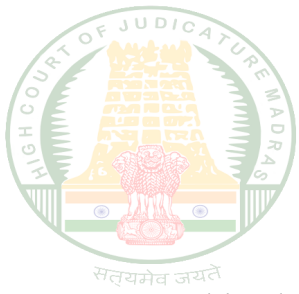


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deceased turned hostile. The only other witness PW-7 had deposed that on 05.07.2015 night at about 1.30 he came out from his house to attend the nature's call. At that time, he heard ladies voice from the accused house. Next day, he came to know Essakkiammal and her daughter were murdered. His testimony does not incriminate the accused in any manner.

g) PW-9-Nambi and PW-10-Ramaiah are brothers of PW-8. They are closely related to the deceased. They both are witnesses to the mahazars alleged to have been prepared at the Scene of Crime. The self contradictions in their testimony makes the prosecution case un-believable on all vital aspects .

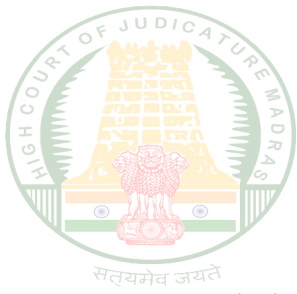
5. The learned Additional Public Prosecutor submitted that, it is a gruesome double murder of mother and child. After committing the murder, the accused left the house at about 4.00 am in his two wheeler. He concealed the knife used for killing his wife and his blood stained clothes in a throne bush near Ayakudipillai well at Thalavaipuram Aavin Milk processing centre. From his confession, the fact disclosed is that, he was not comfortable with his wife refusal to have sex with him on account of his



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skin decease and on the fateful night when he called her to have sex, her comment about his skin decease and the child birth had infuriated him. The accused had tortured his wife both mentally and physically suspecting her fidelity. That was reported by the deceased Essakkiammal, to her mother PW-1 even on the day prior to the occurrence. On 05.07.2015 night, the accused infuriated by the comment of his wife, attacked her indiscriminately with knife. He had thrown his 6 months old daughter in the water drum and killed her. The knife and blood stained clothes concealed by the accused were recovered on his confession in the presence of witnesses. The accused who was with his wife and daughter before the incident and fled from the house on 06.07.2015 early morning, immediately after their death, was absconding till his arrest on 20.07.2015. Though PW-3 to PW-6 turned hostile, the accused being the husband and father of the persons who were found dead in his house is bound to explain and have the exclusive knowledge about what happened within the four walls on that night. The only explanation given by way of suggestion to the prosecution witness is that he was not in the house on that night, he and his parents left to Tiruchendur. Only on his return, he came to know about the death of his wife and daughter. In the absence of evidence to probablise this explanation



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and absence of explanation for his ascendance for 15 days, the plea of alibi rightly found not reliable by the trial court.

6. Heard the learned Counsels on either side and the records scrutinised.

7. The prosecution case rests on evidence in respect of following incriminating circumstances:

a) The accused is the husband of Essakkiammal and the father of 6 months old female baby Divya. All Three were living in house bearing Door No:2/118, Rationshop East Street, Edayankulam, Thalavaipuram falling within the territorial jurisdiction of Chinnakovilakulam Police Station limits. This fact not in dispute and spoken by the prosecution witnesses including PW-3, PW-4, PW-5 and PW-6 those who turned hostile.

b) PW-1, Sudalaivadivu had deposed that on 05.07.2015 her daughter Essakkiammal called her over phone and complaint to her that her husband suspects her fidelity and quarrelling. In



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the background she also heard the accused shouting at her daughter.

c) PW-7, Madasamy the resident living near the house of the accused, on 05.07.2015 night at about 1.30 hrs when he came out to attend the nature's call, heard lady voice from the accused house.

d) On 06.07.2015 witnesses found Essakkiammal and Divya dead. The accused was not in the house.

e) PW-12, the doctor who conducted autopsy of Essakkiammal on 06.07.2015 at about 3.15 pm, had opined that she would have died between 8 to 12 hours before Postmortem due to cut injuries caused haemorrhage. PW-13, the doctor who conducted autopsy of Divya on 06.07.2015 at 3.45 pm, had opined that the child would have died between 8 to 12 hours probably due to drowning.

f) The accused who found missing since 06.07.2015 arrested on 20.07.2015.

g) Based on his confession, the blood stained knife, blood stained clothes recovered in the presence of PW-11,



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VAO of that area.

h) Ex.P-12, the serology report says, the test conducted on the blood collected from the articles like the knife, clothe of the deceased Essakkiammal and the clothe of the accused all recovered on the information given by the accused in his confession found to be A-Group human blood. Ex.P-10, is the certificate given by the doctor who conducted delivery of Divya. From the medical records maintained in her hospital, she had certified that the blood of Essakkiammal belongs to A-Group.

8. In addition, the explanation of the accused in his questioning that he was away from the house on that day and he was informed about the death of his wife and daughter by Madasamy of his village is not supported by Madasamy who was examined as PW-7.

9. The trial Court found these circumstances form a unbroken chain to conclusively indicate that the accused and no one else committed the double murder.



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10. To impeach the finding, the grounds of appeal stated above were emphasised by the learned counsel for the appellant. According to the learned counsel, in a case of circumstantial evidence, not only each of the incriminating circumstances must be proved beyond reasonable doubt, but also, those circumstances must constitute a chain with links intact and complete. Burden of proof will not get shifted to the accused under section 106 of the Evidence Act, till the prosecution proves the fundamental facts beyond reasonable doubt. In the instance case the prosecution has not proved the foundational facts beyond doubt, so the trial Court ought not to have convicted the appellant by holding the accused failed to discharge his burden. In support of his argument, he rely upon the below passage in the judgment of the Hon'ble Supreme Court rendered in **State of Punjab-vs-Kewal Krishnan** reported in Indiankanoon.org/doc/153331322.

“Section 106 of the Evidence Act does not absolve the prosecution of discharging its primary burden of proving the prosecution case beyond doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, the

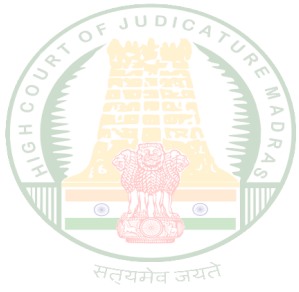


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question arises of considering facts of which the burden of proof would lie upon the accused. (See: Shivaji Chintappa Patil v. State of Maharashtra (2021) 5 SCC 626) ”.

11. The evidence in the case cited had impressed upon the High Court as well as the Supreme Court that, the prosecution has not proved the incriminating circumstances beyond reasonable doubt. Next, they do not form a chain so complete from which it could be inferred with a degree of certainty that it is the accused and no one else who within all human probability, committed the crime. Contrarily to the facts of the that case, in the case in hand, the incriminating circumstances (a) to (g) mentioned above form a complete chain. Each one of the incriminating circumstances proved through evidence without any pale of doubt. Therefore we hold that, the argument placed by the learned counsel for the appellant and the judgment cited does not carry merit or relevancy to interfere the judgement of the trial Court.



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12. As a result, judgement of conviction and sentence passed in S.C.No.686 of 2016 dated 20.12.2022 in S.C.No.686 of 2016 on the file of the learned Sessions Judge, Mahila Court, Tirunelveli District, is confirmed. The Criminal Appeal stands dismissed. Consequently, connected miscellaneous petition is closed.

[G.J.,J] & [R.P., J]
10.03.2025

Index : Yes/No
Internet : Yes/No
NCC : Yes/No

PJL

To

1.The Sessions Judge,
Mahila Court,
Tirunelveli.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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**DR.G.JAYACHANDRAN, J.
AND
R.POORNIMA, J.**

PJL

**Judgement made in
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10.03.2025