



Crl.A(MD)No.126 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 18.03.2025

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

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Murugesan

... Appellant/Sole Accused

Vs.

The State rep. by
The Inspector of Police,
Poovanthi Police Station,
Sivagangai District.
(in Cr.No.122 of 2012)

...Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of the Criminal Procedure Code to call for the entire records connected to the Judgment in S.C.No.67 of 2013 on the file of the Principal Sessions Judge, Sivagangai, dated 27.08.2019 and set aside the conviction and sentence imposed against the appellant.



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For Appellant : Mr.M.Jegadeesh Pandian
For Respondent : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor

JUDGMENT

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

This Criminal Appeal is filed against the conviction and sentence passed against the appellant/sole accused in the judgment in S.C.No.67 of 2013 dated 27.08.2019 passed by the Principal Sessions Judge, Sivagangai, by convicting and sentencing the appellant for the offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a sum of Rs.1,000/- in default, to undergo three months rigorous imprisonment.

2. The appellant herein is the sole accused in S.C.No.67 of 2013. It is a case of murder of wife by the husband.

3. According to the prosecution, the appellant herein had estranged relationship with his wife Bharadha Devi. On 03.08.2012, took her in his two wheeler under the pretext of going to temple, but took



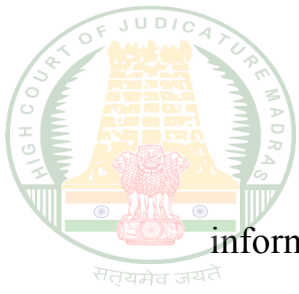
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her to an isolated place and stabbed her repeatedly causing her death. It is the further case of the prosecution is that on hearing the scream of Bharadha Devi, P.W.2 rushed to the place and saw Bharadha Devi in pool of blood with several injuries. When he enquired her, she told him that she and her husband came in a two wheeler to go for a temple, her husband stabbed her and ran away. At that time, another person of his village called Ramasamy came and they both called 108 ambulance and send the injured persons to Sivagangai Government Hospital.

4. On intimation, the Village Administrative Officer went to the spot and after ascertaining the occurrence given a complaint to the Respondent Police at about 4.30 p.m. His complaint is marked as Ex.P.1 and informant examined as P.W.1.

5. The owner of the house in which the deceased was residing with her children examined by the prosecution as P.W.12 and she has deposed that Bharadha Devi came as a tenant three (3) months prior to the occurrence and day before the occurrence her husband came and stayed with her along with the children. On 03.08.2012, after sending the children to the School, they both left the house in a two wheeler



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informing her that they are going to temple. Thereafter, she came to know that Bharadha Devi was stabbed to death. The postmortem Doctor had deposed that Bharadha Devi had sustained multiple lacerated injuries and opined that should have died due to injury of vital organ.

6. Based on the materials placed, the Sessions Court framed charge under Section 302 IPC and tried the accused.

7. In the whole, the prosecution case based on 13 witnesses, 12 exhibits and 8 material objects were found to be sufficient to prove the guilt of the appellant/accused for the offence under Section 302 IPC and therefore, the trial Court sentenced him to undergo life imprisonment and to pay a fine of Rs.1,000/- in default to undergo 3 months rigorous imprisonment. The said judgment of conviction and sentence is challenged in this Criminal Appeal.

8. The learned counsel appearing for the appellant submitted that the trial Court erred in holding the evidence of P.W.2 and P.W.3 as wholly reliable. The contradictions between the evidence of P.W.2 and P.W.3 go to show that they are not at all witness to the occurrence,



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particularly, they had deposed that after calling 108 ambulance, they sent the injured person in the ambulance to the Government Hospital, Sivagangai, but did not accompany the injured. The fate of the injured person not spoken by them. P.W.3 in his evidence claims that he saw the assailant running and sought the help of the cattle grazers to catch him. However, P.W.2 had not whispered about the presence of the assailant.

9. That apart, the learned counsel also submitted that the informant examined as P.W.1 is the Village Administrative Officer. According to him, he received the information at about 1.30 p.m., on that day, however, he had gone to the Police Station and given the complaint Ex.P.1 only at 16.30 hours. He has not explained the reason for delay. Admittedly, when he went to the spot, the injured person was not in the spot. The content of the information converted into FIR belatedly does not reflect the true occurrence. The evidence of P.W.4 Jeevarathinam, the father of the deceased and P.W.5 Pandi, the brother-in-law of the deceased also not been properly considered by the trial Court. They both had deposed that the deceased and the accused were not living together and one of the child was with the accused. This evidence by the close relatives of the deceased is contrary to the evidence of P.W.12 the house



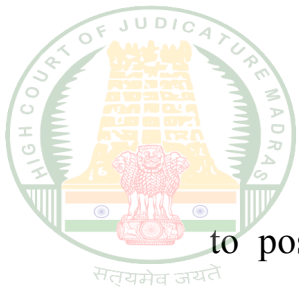
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owner, who claims that on the date of occurrence both the children along with deceased and the accused were staying in her house and after leaving the children at the School, the husband and wife left in the two- wheeler for the temple.

10. The learned counsel would also submit that the evidence of P.W.6 is of no assistance to the prosecution case since he has neither identified the accused nor the deceased except to say that near the scene of occurrence, he saw two persons going inside the kanmoi after parking the two wheeler.

11. The learned counsel for the appellant primarily submitted that the prosecution miserably failed to explain the fate of Bharadha Devi who sustained injury and sent in an ambulance to the Hospital by producing the Accident Register copy or the evidence to show how the body of Bharadha Devi reached the mortuary of Sivagangai Government Hospital and when it reach the Hospital.

12. The learned counsel referring the opinion of the postmortem Doctor that Bharadha Devi might have died six hours prior



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to postmortem and the postmortem was conducted on 04.08.2012 at about 12.15 p.m., the probable time of death should have been at 6 a.m., on 04.08.2012. The prosecution case is that Bharadha Devi was repeatedly stabbed by her husband/accused on 03.08.2012 around 1.30 p.m. The opinion of the postmortem Doctor and the failure of the prosecution to produce the Accident Register copy and evidence of 108 ambulance driver goes to the route of the prosecution case to disbelieve their evidence.

13. The learned Additional Public Prosecutor submitted that the relationship between the accused and the deceased is not disputed. The deceased residing separately as a tenant in the house of P.W.12 also proved through the evidence of P.W.12 as well as evidence of P.W.4 and P.W.5. The testimony of P.W.12 that she saw the deceased and the accused leaving the house at about 10.30 a.m., in the two wheeler not being impeached by the accused through cross examination. To corroborate her evidence that the deceased and accused went in the two-wheeler is substantially supported by evidence of P.W.6., who is passer-buyer saw a couple in the two-wheeler near the scene of occurrence. Though in isolation evidence of P.W.6 may not be so

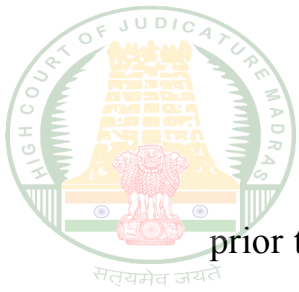


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relevant the fact that the deceased found badly injured in that place by P.W.2 and P.W.3 has to be considered conjointly.

14. The learned Additional Public Prosecutor further submitted that P.W.2 had seen the deceased alive with serious injuries, he heard from the injured person that she was stabbed by her husband. She had also disclosed her name and identity of her husband. This being reflected in the complaint given by P.W.1 fairly admitting that the prosecution had failed to place evidence regarding the ambulance and the time of admitting the injured person in the Hospital. He would submit that the inquest report was marked as Ex.P.10 provides the answer for the doubt raised by the appellant.

15. The learned Additional Public Prosecutor submitted that the inquest report conducted at Sivagangai Government Hospital in the presence of panchayadhars proved that the body of Bharadha Devi had reached the Hospital prior to 7.30 p.m., on 03.08.2012. The postmortem was conducted on the next day i.e., on 04.08.2012 at about 12.15 p.m. Therefore, the learned Additional Public Prosecutor submitted that the testimony of the postmortem Doctor that the death occurred six hours



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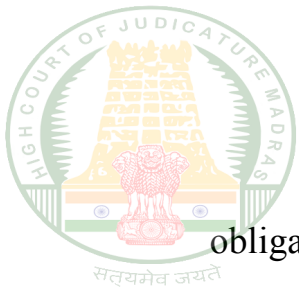
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prior to postmortem is being said inadvertently instead of six hours prior to admitting the body and receiving the body in postmortem.

16. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

17. The case of the prosecution heavily relied upon the evidence of P.W.2 who is the first person to see Bharadha Devi with several injuries over her body and alive. He had deposed that the injured person disclosed her name as Bharadha Devi, she came along with her husband in a two wheeler, her husband stabbed her and went. She had pleaded to save her children. At the same time, P.W.3 Ramasamy has also come along that way and they both had called 108 ambulance and send the injured person to Sivagangai Government Hospital. They have also informed Poovanthi Police Station and Village Administrative Officer.

18. The learned counsel appearing for the appellant would submit that these two witnesses, P.W.2 and P.W.3 are politician, they have



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obligation to the Police to support them and hence, their evidence should not be believed. Such a general statement against the Members of Local body is unfair. Being a former Village Panchayat President, P.W.2 had acted as a good samaritan try to help the injured lady on hearing her cry. He had mounted the witness box, narrated what he saw and heard. He had subjected himself for cross examination. However, in the cross examination his credential has not been impeached even as inch. No doubt there is a long time gap between the incident which alleged to have happened between 1.00 and 1.30 p.m., and the complaint which was registered at about 4.30 p.m. This gap has no impact on the credential of the prosecution case, when evidence of P.W.2 and P.W.3 clearly show that Bharadha Devi was found badly injured and send to the hospital in 108 ambulance.

19. The only point to be proved by the prosecution is who cause the injury which has led to the death of Bharadha Devi.

20. For that, this Court is of the view that the evidence of P.W.2 itself sufficient being *res gestae* evidence. The scream of the deceased heard by P.W.2 and he also heard regarding the person who



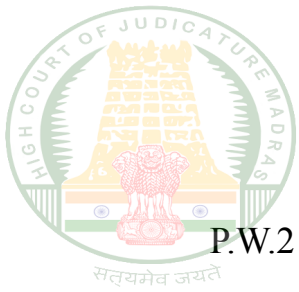
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cause the injury, this coupled with evidence of P.W.10, the postmortem

Doctor who had opined that the death of Bharadha Devi was due to injury in her vital organ prove the case of the prosecution beyond any reasonable doubt that the appellant is the person who has caused the injuries leading to the death.

21. The other circumstantial evidence like the evidence of P.W.2 and P.W.6 adds further credential to the prosecution case minor deviation or the lapse of prosecution not producing the accident register and details of the ambulance does not hit the route of the case.

22. The learned counsel appearing for the appellant relying upon the judgment of the Hon'ble Supreme Court rendered in ***Vijay Singh @ Vijah Kr. Sharma Vs. State of Bihar*** reported in ***2024 SCC Online SC 2623*** wherein the Hon'ble Supreme Court has made the following observation regarding the opinion of the postmortem submitted that the evidence of the postmortem Doctor that the death could have occurred six hours prior to postmortem is very important, since the prosecution has failed to explain about the whereabouts of Bharadha Devi either alive or dead between 1.30 p.m., the alleged time at which



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P.W.2 and P.W.3 saw her alive, till 7.30 p.m., when the inquest commenced at Sivagangai Government Hospital. In this regard, the observation of the Hon'ble Supreme Court in **Vijay Singh @ Vijah Kr.Sharma's case** cited supra need to be considered. Paragraph No.30 reads as follows :

“30. The appellants have also raised certain objections with respect to the time of death. The discrepancy has been flagged in light of the post mortem report, based on the post-mortem conducted at around 5:30 PM on 31.08.1985, which indicates that death took place around 24 hours ago. It indicates that the time of death must have been around 5:00 PM on 30.08.1985, which is contrary to the evidence of PW18 that the incident took place around 10:00 PM on 30.08.1985. A post mortem report is generally not considered as conclusive evidence of the facts mentioned in the re-port regarding the cause of death,time of death etc. It could always be corroborated with other direct evidence on record such as ocular evidence of the eye witnesses. However, when there is no other credible evidence on record to contradict the report, the facts stated in the post mortem report are generally taken as true. In the present matter, the evidence of the eye witnesses has been declared as wholly unreliable including on the



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aspect of time of death. Thus, there is no reason to doubt the post mortem report and the findings therein.”

23. In this regard the sequence of event as found from the prosecution evidence would go to show that the occurrence happened around 1.00 p.m., on 03.08.2012. Bharadha Devi was found alive with injuries by P.W.2 and P.W.3 and she was sent to hospital in 108 ambulance at around 1.30 p.m. P.W.1-Village Administrative Officer had reached the spot on receiving the information after 1.30 p.m. and he has informed the Police at about 4.30 p.m. In his complaint itself P.W.1 had stated that he came to know that Bharadha Devi succumbed to injury. Therefore, the death of Bharadha Devi find place in the complaint as well as the FIR which has been registered at about 16.30 hours. The body seen by the panchayadhars at Sivagangai Government Hospital at about 19.30 hours during the inquest. Undoubtedly, there is a lapse in the case of the prosecution by not producing the relevant documents regarding the movement of injured person from the spot to the Hospital. However, whether the said lapse will enure any benefit of doubt to the appellant, if considered this Court finds that this lapse has no bearing in arriving at the decision regarding the guilt of the appellant, because



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evidence of P.W.2 and P.W.3 coupled with evidence of P.W.12 and P.W.6

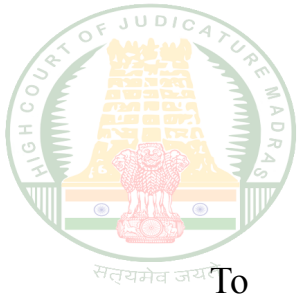
to some extent to be read conjointly and the evidence of P.W.4 and P.W.5

go to show that the appellant who had married the deceased got separated from her. Only on the day prior to the occurrence went to her place enticed her to accompany him to the temple, took her to an isolated place and stabbed her to death. Being a clear case of preplanned murder, this Court finds no reason to interfere with the finding of the trial Court. Hence, the conviction and sentence imposed by the trial Court stands confirmed.

24. In the result, the Criminal Appeal stands dismissed and the judgment passed in S.C.No.67 of 2013 on the file of the Principal Sessions Judge, Sivagangai, dated 27.08.2019 is hereby confirmed. The accused shall surrender before the trial Court forthwith, failing which, he may be secured and committed to prison to undergo the remaining period of sentence.

(G.J., J.) & (R.P., J.)
18.03.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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To
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- 1.The Principal Sessions Judge,
Sivagangai,
- 2.The Inspector of Police,
Poovanthi Police Station,
Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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

RM

Judgment in
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