



Crl.A (MD). Nos.274 and 294 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2025

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HONOURABLE Mrs. JUSTICE L.VICTORIA GOWRI

Crl.A (MD). Nos.274 and 294 of 2022

Raman ... Appellant/A2 in
Crl.A.No.274/2022

Augustin Lio ... Appellant/A1 in
Crl.A.No.294/2022

Vs

The Inspector of Police,
Kallakudi Police Station,
Trichy District ... Respondent in both
appeals

PRAYER :-Criminal Appeals filed under Section 374(2) of the Code of Criminal Procedure against the judgment dated 13.02.2021 in SC No.17 of 2018 on the file of the Sessions Judge, Mahila Court, Trichy.

For Appellants : Mr.G.Karuppasamy Pandiyan
(Crl.A.No.274/2022)
Mr.T.Leninkumar
(Crl. A No.294/2022)

For Respondent : Mr.B.Nambiselvan in both appeals
Additional Public Prosecutor



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COMMON JUDGMENT

(Judgment of the Court was delivered by P.VELMURUGAN,J.)

The Criminal Appeals are directed against the judgment dated 13.02.2021 in SC No.17 of 2018 on the file of the Sessions Judge, Mahila Court, Trichy, in and by which, the appellants were convicted and sentenced for the offences as tabulated below:

Sl.No.	Offences u/s. IPC	Rank of the Accused	Period of sentence
1	449	A1 & A2	To undergo rigorous imprisonment for three years and to pay a fine of Rs. 2,000/- each, in default to undergo simple imprisonment for three months
2	342	A1 & A2	To undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/- each in default to undergo simple imprisonment for one month
3	302 r/w 34	A1 & A2	To undergo imprisonment for life and to pay a fine of Rs. 5,000/- each, in default, to undergo simple imprisonment for six months.

The sentences were ordered to be run concurrently.



2. The case of the prosecution in nutshell is as follows:

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The deceased in this case was one Kalaiselvi. She was a resident of Vadukarpettai and was working as a staff nurse in Primary Health Centre, Vadukarpettai. Both the accused are residing in Semmanpalayam at Vadugarpettai. The accused used to unload the medicine boxes, which were delivered to the primary health centre. As such, the accused were known to the deceased. It is alleged that both the accused used to speak to the deceased in double meaning. When the act of the accused was brought to the knowledge of their parents by the deceased, the accused got angry and with an intention to kill the deceased, on 24.08.2017, both the accused went to the house of the deceased. On the pretext that a snake had gone inside the house of the deceased, the accused called the deceased and hence, the deceased opened her house, where the accused had trespassed into the house of the deceased with an intention to cause death. Subsequently, the accused by using unparliamentary words removed the saree of the deceased and by using a towel, first accused throttled the neck of the deceased, while the 2nd accused was said to have attacked the deceased on her head with stick. Due to the said attack, blood oozed out from the nose of the deceased. Subsequently, the



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accused was said to have tied the legs and hands of the deceased using the saree and dragged her to the bathroom, where the accused, by pressing the head of the deceased, forced her to inhale the bleaching powder, which was sprinkled by them in the wash basin. The deceased fell unconscious. On the impression that the deceased died, the accused had left her by locking the bathroom from outside and escaped from the said place. Since the deceased was not taking the phone calls for two days, the father of the deceased, P.W.2, sent his grandson (P.W.1) to see the deceased. On his direction, P.W.1 had gone to the house of the deceased on 26.08.2017, where he found that inside the locked bathroom, the deceased was in an unconscious state. On seeing her, with the help of two passer-by, the deceased was taken to hospital. In the hospital, the deceased was conscious and she informed the doctor (P.W.19) that two known persons strangled her by using towel and made her to inhale the bleaching powder by pressing her head and tied her hands and legs using saree.

2.1. On 27.08.2017, on the intimation from the hospital and the complaint (Ex.P10) given by the injured/deceased, P.W.17, the then Sub



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Inspector of Police, registered a case in Crime No.295/2017 under Sections 294(b), 323, 342, 307 IPC and Section 4 of Women Harassment Act under Ex.P.11 - FIR. The deceased died on 29.08.2017.

2.2. P.W.18 took up the case for investigation. He went to the place of occurrence at 7.30 a.m., on 27.08.2017, prepared an observation mahazar and a rough sketch in the presence of witnesses. He recovered two boxes of bleaching powder from the place of occurrence under a mahazar. Then, he arrested the accused on 27.08.2017 near Union Office Bus Stop at Pullambadi. On the basis of the confession given by the accused, he seized a white cloth towel under a mahazar in the presence of witnesses. On the death of the deceased on 29.08.2017, he filed a final report for the offences under Sections 449, 294(b), 323, 342, 302 r/w 34 IPC and Section 4 of Women Harassment Act. On receipt of the final report, the Judicial Magistrate, Lalgudi, took cognizance of the case on file in PRC No.17/2018. He conducted inquest on the body of the deceased and forwarded the body for postmortem. He forwarded the accused to judicial remand and handed over the material objects to the Court. On completing the investigation, he laid chargesheet against the accused. The body was then sent for postmortem.



2.3. P.W.16 – Dr.Selvakumar conducted autopsy on the body of the deceased. He found the following injuries:

1.abrasion on left shoulder, abrasion on left hand 2x5x2 cm two injuries on left elbow 4x0.5x0.5 cm on the left side of forehead.

Ex.P6 is the postmortem certificate. He gave opinion that the deceased could have died due to strangulation of neck.

3. Based on the above materials, the trial Court framed five charges against the accused persons under Sections 449, 294(b), 323, 342 and 302 r/w 34 IPC. They denied the same as false. In order to prove the case, on the side of the prosecution, as many as 19 witnesses have been examined and 16 documents besides 3 material objects were marked.

4. Out of the said witnesses, P.W.1 – is the sister's son (nephew) of the deceased. He is the one who saw the deceased lying unconscious and admitted her in the hospital. P.W.2 is the father of the deceased and is a hear-say witness. P.W.3 a relative of the deceased. P.W.4 is the brother of the deceased. He has spoken about the death of the deceased at the hospital and he is a hearsay witness. P.W.5 is the witness to the



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observation mahazar and for seizure of bleaching powder in the place of occurrence. P.W.6 is a hearsay witness. P.W.7 Manoharan has spoken about the fact that the accused were working in the hospital as loadman and he saw both the accused near the hospital at 4.30 p.m. on 24.08.2017. P.W.8 is the younger brother of the deceased. P.W.10 is a witness to the observation mahazar and seizure mahazar. P.W.11 is a witness, who has spoken about the confession statement given by the accused. P.W.12 is the neighbour of the deceased, who has spoken about the fact that she offered milk for preparing tea for the deceased. P.W.13 and P.W.14 are the staff nurses working in primary health centres along with the deceased and they have spoken about the treatment given to the deceased. P.W.15 is the Police Constable for postmortem. P.W.16 – Dr.Selvakumar has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.18 is the investigating officer, who conducted investigation and arrested the accused. P.W.19 is the Doctor, who has given initial treatment to the deceased.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. On their side,



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neither a witness nor a document is marked.

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6. On appreciating the evidence let in both oral and documentary on either side, the trial Court, convicted and sentenced the accused as narrated in the first paragraph of this judgment. Challenging the same, the appellants are before this Court with these appeals.

7. The appellants in both the appeals are referred to as A1 and A2 for easy reference.

8. The learned counsel for the appellant/A1 would submit that the case is based on circumstantial evidence; to prove the guilt against the accused, A1 has adduced evidence linking all the circumstances, namely, motive, last seen and recovery. In this case, the failure to link the circumstances would vitiate the entire prosecution case. He would submit that the origin and genesis of the occurrence was deliberately suppressed by the prosecution and the motive has not been established as mentioned in the complaint, which itself is highly doubtful. The learned counsel would submit that there is no corroborative evidence to link the



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chain of events, like the last seen theory, motive and recovery. Though the evidence of P.W.1 that on the request of P.W.2, he had gone to the house of the deceased and the house was locked outside and when he went inside the store room abetting the house, the bathroom was locked outside, where he heard a murmuring noise and immediately he opened the bathroom and found the deceased lying unconscious, his evidence is highly doubtful, since the same was not corroborated by Ex.P.11 FIR. Even the rough sketch shows only one entrance to the house of the deceased, when P.W.1 had gone to the house, the entrance was locked and it is not known as to how P.W.1 entered into the house through other entrance, which is not shown in the rough sketch. Therefore, the mahazar itself is doubtful. The prosecution has not proved the motive, last seen theory that the accused were lastly seen along with the deceased soon before the occurrence and the consequential recovery made. The confession statement said to have been recorded by the police is not admissible in evidence, which is hit by Section 25 of the Indian Evidence Act. Therefore, in the absence of any proof of motive, last seen theory and recovery, conviction made based on the alleged complaint given by the deceased is not legally sustainable. The trial Court mainly proceeded



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with the complaint given by the deceased while admitted in the hospital for treatment. He would contend that the mental status of the deceased was not assessed and the Doctor has also not given any certificate to that effect. Further when the evidence of P.W.1 and P.W.2 shows that the deceased was not conscious at the time of admission, the Doctor says that the deceased was conscious and the dying declaration was also not recovered in the manner known to law. Since the deceased gave a statement while admitted in the hospital after death the statement was treated as dying declaration and the conviction only based on the said dying declaration is legally not sustainable, unless there is corroboration. Therefore, there are material contradictions in the evidence of P.W.1 and P.W.18 and therefore, the conviction recorded by the trial Court is liable to be set aside.

9. The learned counsel for A2 would submit that there is no specific overt act attributed against A2. The genesis of the complaint itself is doubtful and the entire case of the prosecution rests upon circumstantial evidence and the prosecution has not proved the ingredients of motive, last seen theory and recovery and in the absence of



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the same, conviction cannot be recorded in the case of circumstantial evidence. The last seen theory projected by the prosecution through P.W.7 is not at all the last seen in true sense, since P.W.7 had stated in his evidence that he happened to see A2 and A1 near the primary health centre on the date of occurrence. It is not that A2 and A1 were seen along with the deceased. The complaint given by the deceased also highly doubtful and the signature of the deceased and the contents found thereon had not been identified by any of the witnesses. Moreover, in the complaint statement, the deceased said to have stated that she was attacked by A2 and A1 by stick, that too, on her head. Per contra, the postmortem does not spell out any injury on her head much less contusion. P.W.17 had admitted that she got written intimation from the hospital and had gone there and recorded the statement of the deceased. Further, he admitted that the relatives of the deceased were present when the complaint statement was recorded. However, nobody had signed as a witness in the said complaint. Further he admitted that the written intimation had neither been entered in the general diary nor produced before the trial Court. The evidence of P.W.3 is contrary to the complaint statement and further admitted that when he met the deceased in the



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hospital, she was conscious. Therefore, the statement given by the deceased is highly doubtful as the same was not recorded in the presence of the Doctors and any paramedical staff in the hospital. The trial Court had failed to consider the postmortem certificate as well as the evidence of P.W.16 - Doctor, who has admitted that he was not sure enough to the cause of death of the deceased and the strangulation by towel is not ruled out and the trial Court has failed to consider the evidence of P.W.19, who provided first aid to the deceased on 26.08.2017. P.W.19 stated that the intimation was given to the respondent police on the same day. However, the said intimation was deliberately suppressed by the prosecution. The confession is not admissible in evidence and the subsequent recovery was also not proved in the manner known to law and even in the confession statement, it is not mentioned the place, where they kept the materials and in the absence of the same, the confession statement is not admissible in evidence. Therefore, the prosecution has failed to prove the case beyond reasonable doubts. The learned counsel would contend that when two views are possible, the views favorable to the accused has to be taken in favour of the accused and therefore, the conviction recorded and the consequential sentence imposed by the trial Court are



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not in consonance with the substantive materials and therefore, A2 is liable to be acquitted of all the charges.

10. In order to substantiate the contentions, the learned counsel relied on the following judgments:

- (i) Subash Aggarwal v. the State of NCT of Delhi [2025 Livelaw (SC) 443]
- (ii) Pradeep Kumar v. State of Chattisgarh [2023 Livelaw (SC) 239]
- (iii) Uka Ram v. State of Rajasthan [2001 (5) SCC 254]

11. The learned Additional Public Prosecutor, on the other hand, would submit that though the case rests on the circumstantial evidence, the prosecution has proved the circumstances and the chain of circumstances would prove that these accused were responsible for the death of the deceased. The first circumstance is that the accused knew the deceased and since the accused made innuendos statements to the deceased, the deceased was enraged and complained the same to the parents of the accused. Not being tolerated with the same, it was these accused, who had gone to the house of the deceased, strangled her by



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using a towel and tied her hands and legs with the saree and made her to inhale the bleaching powder, which was sprinkled by them in the bathroom wash basin by pressing her head. The innuendos statements made to the deceased and the complaining of the deceased to the parents of the accused would clearly spell out the motive. It was these accused, who, on the pretext that a snake entered into the house, had barged into the house of the deceased and had strangled her and pushed her in the bathroom and locked. For all these reasons, the learned Additional Public Prosecutor would contend that the prosecution has proved the chain of circumstances, ie., motive, last seen and the consequent recovery made, beyond reasonable doubts and accordingly, prays for dismissal.

12. We have heard the learned counsel for the appellants, the learned Additional Public Prosecutor for the respondent and we have also perused the records carefully.

13. It is a case based on circumstantial evidence. In a case of this nature, it is for the prosecution to prove the circumstances projected by it beyond reasonable doubts and such proved circumstances should form a



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complete chain so as to unerringly point to the guilt of the accused and there should be no other hypothesis inconsistent with the guilt of the accused. With the said broad principle in mind, let us go into the circumstances projected by the prosecution.

14. Admittedly, in this case, there is no eye witness. However, P.W.1 had stated that on receiving information call from P.W.2, he went to the place of occurrence, where he saw the deceased lying unconscious with her hands and legs tied with the saree and thereafter, he took the deceased to the hospital and admitted her. Though there is no eyewitness, there is no last seen theory. However, the deceased, while alive and taking treatment in the hospital, made a statement before the respondent police and subsequently, she died on 29.08.2017. Therefore, under Section 32 of the Evidence Act, the statement made by the deceased to the Doctor would be treated as dying declaration. Though the learned counsel for the appellants vehemently contended that the statement said to have been given by the deceased itself, the presence of P.W.1 in the occurrence place is highly doubtful, a reading of the evidence of the Doctor – P.W.19 at the Government Hospital at about 7.10 p.m. on



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26.08.2017 would go to show that the deceased was brought by 108 ambulance and when P.W.19 examined her, she appears so tired and she was conscious and also able to understand and answer the queries. At that point of time, she informed P.W.19 that two known persons pushed her and also strangulated her with their hands and also they spread the bleaching powder in the mouth and rubbed her, in that process, she sustained injuries. The statement was recorded for registering the complaint from the injured. Therefore, the first statement was given by the deceased before the Doctor, while she was admitted in the hospital and the Doctor has clearly deposed that the deceased was conscious and able to understand and speak. Though P.W.1 saw the deceased in the occurrence place in an unconscious state, later when she was brought to the hospital, the Doctor deposed that she was conscious and subsequently she died on 29.08.2017. The doctor, who conducted the postmortem, clearly stated about the injuries. Originally the case was registered under Sections 294(b), 323, 342, 307 IPC and Section 4 of Women Harassment Act. Subsequently the same was altered into 449, 294(b), 323, 342, 302 r/w 34 IPC and Section 4 of Women Harassment Act.



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15. Though this case is not based on circumstantial evidence, since the injured herself had given a statement, the same was recorded. Though the learned counsel for the appellants disputed the said statement on the ground that signature was not proved and no witness was examined and the Doctor certificate was also not obtained at the time of recording the statement, neither the deceased nor the respondent police would expect that the deceased would die. When she suffered with injuries and taking treatment, after receiving the intimation from the hospital, the respondent police went to the hospital and recorded the statement from the injured, however, subsequently she died after two to three days. Therefore, the respondent police altered the charges and the statement given by the injured was treated as dying declaration, which is permissible under Section 32 of the Evidence Act. While re-appreciating the evidence, this Court not only rests upon the complaint recorded by the police from the deceased while she was alive, P.W.19 has clearly stated that while the deceased was admitted in the hospital for treatment, she has clearly stated that two known persons caused the injuries. The subsequent statement of her proved that who are the known persons. Therefore, the contention of the learned counsel for the appellants that



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the ingredients of circumstantial evidence like the motive, last seen theory and recovery is not satisfied, since the very first statement made before the Doctor, clearly established that those known persons caused injuries. The accident register entry Ex.P.16 does not reveal that as to whether the patient was conscious. If at all at the time of admitting in the hospital the injured was not conscious, the Doctor would have mentioned in the accident register. In Ex.P16, there is no such entry. However, the doctor, who made the accident register Ex.P.16 was examined as P.W.19, who has clearly stated that the patient was conscious and able to speak and therefore mere non mentioning in the Accident Register as to whether patient was conscious or not will not be the sole reason to disbelieve the evidence of the prosecution witness. Further mere lapse on the part of the investigating agency or defect in investigation may not be taken as a ground to acquit the accused.

16. A reading of the evidence of P.W.19, this Court finds that the evidence of P.W.19 is cogent, consistent and reliable and the same was corroborated with the statement made by the deceased herself while admitted in the hospital. Therefore, this Court finds that it is the



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appellants, who have caused injuries on the deceased. However, from the evidence of P.W.19, at the time when the deceased was admitted in the hospital, she was conscious and hence, this Court finds that the offence committed by the accused would not fall under Section 302 IPC. However, from the oral and documentary evidence and the medical records, the act of the accused would fall under Section 307 IPC. Therefore, the conviction and sentence recorded under Section 302 IPC and sentence imposed for the offence under Section 302 IPC is liable to be set aside.

17. As far as the decisions relied on by the learned counsel for the appellants are concerned, it is not applicable to the facts of the present case on hand.

18. In view of the foregoing reasons and discussions, the criminal appeals are allowed in part and the conviction and sentence imposed on the appellants under Section 302 IPC are set aside, instead, the appellants are convicted for the offence under Section 307 IPC and they are sentenced to undergo rigorous imprisonment for ten years.



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19. As far as the offences under Sections 449 and 342 are concerned, the conviction and sentence imposed on them are hereby confirmed.

20. The sentences are ordered to run concurrently. The period of sentence already undergone by the accused shall be given set off under Section 428 Cr.P.C.

[P.V.,J]

[L.V.G.,J]

24.10.2025

NCC : Yes/No

Index : Yes/No

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To

1.The Inspector of Police,
Kallakudi Police Station,
Trichy District

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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AND
L.VICTORIA GOWRI, J.

RR

ORDER
IN
CRL.A (MD) Nos.274 and 294 of 2022

Date : 24.10.2025