



Crl.A(MD)Nos.332 & 361 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.01.2025

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

Crl.A(MD)Nos.332 & 361 of 2020

Velmurugan ... Appellant in Crl.A(MD)No.332 of 2020/
Accused No.2

Pothumponnu ... Appellant in Crl.A(MD)No.361 of 2020/
Accused No.1

Vs.

The State rep. by
The Inspector of Police,
Abiramam Police Station,
Ramanathapuram District.
(in Cr.No.93 of 2018) ...Respondent/Complainant in both appeals

COMMON PRAYER : Criminal Appeals filed under Section 374(2) of
the Criminal Procedure Code to call for the entire records connected to
the Judgment in S.C.No.35 of 2019 on the file of the Principal District



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and Sessions Court, Ramanathapuram, dated 18.03.2020 and set aside the conviction and sentence imposed against the appellants.

In both appeals

For Appellants : Mr.R.Alagumani – for A2

Mr.R.Manickraj – for A1

For Respondent : Mr.T.Senthil Kumar,

Additional Public Prosecutor

COMMON JUDGMENT

(Judgment of this Court was delivered by **R.POORNIMA, J.**)

These Criminal Appeals are filed against the conviction and sentence passed against the appellants/accused No.1 and 2 in the judgment dated 18.03.2020 passed by the Principal District and Sessions Judge, Ramanathapuram in S.C.No.35 of 2019 by convicting and sentencing the appellants for the offence punishable under Section 302 and 449 IPC. A1 and A2 had been convicted for offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/- each in default to undergo one year simple imprisonment each. A2 had been convicted for offence



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punishable under Section 449 IPC and sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo six months simple imprisonment.

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

(a) The complainant was residing with her husband at Keela Kodumalur. Her younger son Armugam was married, with the appellant /accused No 1 herein, 14 years back and was blessed with a girl child, aged about three years.

(b) Her son was residing separately along with his wife, until a year back, she had illegal intimacy with A2, who is the son of her husband's second wife. After knowing the same, they cautioned her; but she continued her relationship with A2.

(c) Therefore, her son deceased Arumugam left Keela Kodumalur and went to Kerala. Thereafter, A1 lodged a complaint, against the complainant before the All Women Police Station, with an allegation that the complainant had separated her husband from her.



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Therefore, the complainant and others requested her son to return back from Kerala, her son therefore, returned and started living with A1.

(d) On 16.07.2018 at about 12.30 hours, the witness, Arjun and his wife Thotichi, noticed smoke from the house of her son, which raised alarm. After hearing the same, she, and her husband went to the house of her son, at that time, A1/her daughter-in-law came with a bill hook, A2 came with an iron rod and they fled from the occurrence place. She found her son lying in his house, bleeding from his head, when she questioned him regarding what happened, her son replied that while he was sleeping, A2 attacked him with an iron rod and inflicted injuries with a bill hook further his wife and Murugan, tied him with a rope then poured kerosene over him and set him ablaze. She found blood stains all over the house and the mat and pillows were seen in a half burnt condition.

(e) Immediately, she called 108 ambulance and admitted her son in Government Hospital for treatment, but he succumbed to his injuries at 3.15 hours. Therefore, she lodged the complaint and requested for action.



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(f) P.W.20, Tmt. Jhansi Rani, Inspector of Police of Abhiramam Police Station, recorded the complainant's statement of P.W.1 and registered FIR in Crime No.93/2018, under sections 342 and 302 IPC in Ex.P19. She sent the FIR and complaint to the concerned Judicial Magistrate Court.

(g) She went to the place of occurrence, prepared observation, Mahazar Ex.P2 and rough sketch Ex.P20 in the presence of witnesses Marikannu and Sasi Kumar, and recovered the material objects viz., kerosene-cane, matchbox, half burnt slipper, half burnt mat and it's particles, half burnt Lungi, half burnt shawl, blood stained silver cup, blood stained earth sample, normal earth sample (M.O.1 to M.O.12) under a recovery mahazar - Ex.P3.

(h) Thereafter, she went to the Government Hospital and in the presence of witnesses and Panchayatdars an inquest was conducted upon the dead body between 14 hours to 16 hours and inquest report Ex.P21 was prepared. She had sent a requisition through Special Sub Inspector Thiru.Murugesan for conducting autopsy on the dead body.



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(i) She examined the witnesses Shanmugavalli, Karuppaiah, Subramanian, and recorded their statements.

(j) As per the secret information, she went to Variangkootam Bus stand on 18.07.2018 at 9.00 a.m. and arrested the accused in the presence of witnesses Kannan, Durairaj and recorded their confession statements under Ex.P23 and Ex.P25 and recovered material objects under Ex.P22 and Ex.P24. Thereafter, the accused was sent for judicial custody.

(k) She examined the witnesses Arjunan, Thottichi, Malaisamy, Bharathiraja, Palani Kumar, Lakshmi, Kannan, Durairaj and recorded their statements. She also recorded the further statements of witnesses Shanmugavalli, Karuppaiah, Subramaniyan, Malaisami.

(l) She sent the material objects to the Court on 30.07.2018. She examined the witnesses Janaki, Balamurugan, Ramesh, Shanmugam and recorded their statements on 13.10.2018.



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(m) On 03.11.2018 examined Dr. Maria Mahendran, Special

Sub Inspector of Police Thiru.Murugesan, Head Constable Thiru.Mahalingam, Women Constable Tmt.Shanmugapriya, Devasankari, and recorded their statements.

(n) On 05.11.2018 after completion of the investigation altered the section of law into sections 342, 302, 449 IPC from 342, 302 IPC and submitted the final report with the alteration report Ex.P26, to the concerned Court.

3. On receipt of the records, the District Munsif cum Judicial Magistrate, Kamudhi took up the case in P.R.C.No.38 of 2018 and issued summons to the accused. After appearance of the accused, copies of all the prosecution documents and witnesses were furnished to them free of cost under Section 207 Cr.P.C.

4. Since the offence was exclusively triable by the Sessions Court, the learned Judicial Magistrate committed the case records to the Principal District and Sessions Judge, Ramanathanpuram under Section 209(A) Cr.P.C. for further action.



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5. The Principal District and Sessions Judge, Ramanathanpuram received the case records and numbered the case in S.C.No.35 of 2019 and thereafter, framed charges against accused Nos.1 and 2 for the offence under Sections 342, 449 and 302 IPC and read over the same and explained to the accused. The accused denied the charges and claimed to be tried. Therefore, the case was posted for trial.

6. In order to prove the case of the prosecution, on the side of the prosecution, P.W.1 to P.W.20 were examined and Ex.P1 to Ex.P26 were marked and Material Objects M.O.1 to M.O.14 were produced. On the side of the accused, no witness was examined.

7. After full trial, the trial Court held that the accused No.1 was guilty of the offence punishable under Section 302 IPC and A2 was guilty of the offence punishable under Sections 302 and 449 IPC. A1 and A2 had been convicted for offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/- each in default to undergo one year simple imprisonment each. A2 had been convicted for offence punishable under Section 449



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IPC and sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo six months simple imprisonment, against which, the present Criminal Appeals are filed on the following among other grounds:-

(a) That the Court below ought to have held that the failure on the part of prosecution for not sending the chemical examination is also fatal to the prosecution.

(b) That the Court below ought to have held that the medical evidence does not corroborate with the evidence of the eye-witnesses.

(c) That the Court below ought to have held that admittedly the occurrence is said to have taken place in the dark night and therefore the witnesses ought not to have witnessed the occurrence.

(d) That the other reasons given by the Court below in convicting the appellant are all unsound and unsustainable in law.

(e) That the appellant herein has reserved his right for filling based



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on the additional grounds during the course of final hearing.

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(f) That the judgment of the trial court is contrary to law and on the facts of the case and the weight of evidence.

(g) That the learned trial Judge convicted the Appellant on the basis of circumstantial evidence. There is no eye witness deposed before the trial court relating to the involvement of the appellant in this case.

(h) That the prosecution failed to explain the reason for the delay for registering the FIR and sent the FIR to the learned Judicial Magistrate.

(i) That the witnesses P.W.2. P.W.3, P.W.4. P.W.6, 7 and P.W.9 turned hostile and P.W.1 is interested witness.

(j) That the presence of the PW I is highly doubtful. The PW.8 is close relative of the P.W.1.



(k) That the trial judge ought to have considered that the deceased was admitted in the government hospital alive, and after taking treatment as inpatient he died, but the prosecution failed to mark the accident register as Exhibit, and the prosecution failed to examine the government doctor who had admitted the deceased in the hospital and provide treatment to the deceased as prosecution witnesses. It clearly established the doubt regarding the case of the prosecution.

(l) That the learned trial judge ought to have considered that according to the evidence of the P.W.I the deceased had attempted to commit suicide by hanging just after four days of his marriage, which clearly discloses that the deceased had suicidal tendency.

(m) That the trial Court failed to note that the prosecution has not proved the case beyond reasonable doubt and hence the Trial Court ought to have acquitted the appellants from all the charges on benefit of doubt.

(n) That the Trial Court passed the sentence against the appellants based on the presumption and surmises, hence, the judgment dated 18.03.2020 of the trial Court is liable to be set aside.



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8. The Additional Public Prosecutor appearing on behalf of the State argued that the deceased and A1 were living in the house where the occurrence took place and the complainant and P.W.8 clearly stated that both the accused ran away from the place of occurrence with weapons, and the prosecution established that both A1 and A2 had illegal relationship and all the witnesses had spoken about the quarrel between A1, A2 and deceased. A1 is bound to explain how the incident took place, as she was staying with the deceased at the time of occurrence, the blood stain found in the weapon and the blood group of the deceased were matching, the prosecution proved the case beyond all reasonable doubt and these Criminal Appeals have no merits liable to be rejected.

9. Heard the learned counsel on either side and perused the material records available on record.

10. Now the Court has to decide whether the judgement passed by the trial court is sustainable or liable to be dismissed.



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11. Since the issues involved in these Criminal Appeals, the facts, evidences and documents are one and the same, they are taken up for hearing together and disposed of by this common judgment.

12. On careful perusal of the entire records, the prosecution case unfolded from the evidence of P.W.1 to P.W.20 are as follows:

(i) PW1 in her evidence deposed that deceased Arumugam is her son. A1 is the wife of deceased and her daughter-in-law, A2 is the son of her husband's second wife.

(ii) Both the accused and the deceased had problem, A1 was living with A2 and refused to live with her son, therefore deceased went to Kerala. The villagers convened a meeting and pacified both her son and A1. Her son came from Kerala for the peace talk. After a meeting, both her son and A1 were living in the adjoining house for four days. On the fourth day both had a quarrel. A1 and A2 went to the Abhiramam Police Station and again a meeting was held between both her son and daughter-in-law (A1).

(iii) They were living together for 10 days and again had a



problem; a complaint was lodged in Kamudhi Police Station.

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(iv) Thereafter, one Nagooran had a talk with them and brought them to the village again. On the date of occurrence, both her son and A1 had a fight, at that time, A2 was present, she pacified them and advised them not to fight and came to her house and slept.

(v) On 16.07.2018 at about 12.00 hours, the witness Thottichi and Arjunan raised alarm by stating that her son's house was burning, she went and witnessed that her son was tied in the Cot with a rope and shouted 'Amma Amma', when she entered into the house, but she found nobody. But noticed that A1 and A2 ran away with a bill hook and an iron rod. Her son informed that A1 inflicted injury on his neck, A2 inflicted injury on his head with iron rod, and she also noticed injury on his neck and head.

(vi) She further stated that one Bharathiraja called the ambulance. When the ambulance reached, Arjunan, Malaisamy, and four others took her son and kept in ambulance. She also accompanied her son to the hospital. She informed the incident to the Doctor. The Doctor



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treated her son and informed to the Police Station, the police came and obtained her thumb impression. Thereafter, her son died in the hospital.

(vii) P.W.2 Thiru. Subramanian, one of the eye witness to the occurrence deposed that both the deceased and A1 had matrimonial dispute. Himself and the elders of the village pacified them and advised them to live peacefully. Both were staying together for 10 days. He came to know about the occurrence that was taken place on 16.07.2018, thereafter, he went to the place of occurrence and found iron rod, bill hook, bucket, kerosene cane, burnt mat, the Police recovered the same. He signed as witness in the complaint. Since he did not fully support the case of prosecution, he was treated as hostile and was cross examined by the prosecution.

(viii) P.W.3 one Malaisamy also did not support the prosecution case stating that he was not aware of anything about the occurrence. He was also treated as hostile and was cross examined by the prosecution.



(ix) P.W.4 Arjunan deposed that, both A1 and A2 were his neighbors, they had illegal relationship, and the villagers cautioned them.

The deceased Arumugam went to Kerala, returned back and was living with his wife. On the date of occurrence, at about 11.30 PM, he found smoke from the residence of the deceased. He raised alarm. Himself, Malaisamy, Marikannu, PW1, and his wife poured water and doused the fire. Due to heat, they could not enter into the house and came back. Thereafter, father of the deceased came. Bharathiraja called the ambulance. Ambulance came, and parents of the deceased took Arumugam to the hospital. Since he also did not fully support the prosecution case, he was also treated as hostile and was cross examined by the prosecution.

(x) P.W.5 Thiru. Marikannan deposed about the preparation of observation mahazar and rough sketch by Investigation Officer in his presence and the recovery of the material objects M.O.1 to M.O.7 and he admitted his signatures in the document.

(xi) PW6 Thiru.Palanikumar, who is the neighbour of the deceased, deposed about the problem between the deceased and A1. He



stated that on the date of occurrence, there was a fight between the deceased and A1. He thought that it was a regular fight and neglected the same. At about 12.00 hours, he heard somebody was crying. He went outside and saw witnesses Marikannan, Arjunan, Bharathiraja, Shanmugavalli, his sister-in-law. Thereafter, he went inside the house of Arumugam and found him in a burnt condition. When Ambulance came, they covered the body of Arumugam with a bedsheet, and found injuries on the backside of his head and neck. Subsequently, he came to know that Arumugam had died. He was treated as hostile and was cross examined by the prosecution.

(xii) P.W.7 Thiru.Karuppaiah father of the deceased and A2 did not support the case of prosecution, turned hostile, and was cross examined by the prosecution.

(xiii) P.W.8 Tmt.Laxmi deposed that she is the neighbour of PW1 and the deceased. The deceased was living with A1. On the date of occurrence, she found smoke emanating from the house of the deceased. PW1 and herself ran inside the house and upon finding A1 with a bill hook and A2 with an iron rod, ran away from the place of occurrence.



Thiru.Malaisamy and other villagers stopped the fire. She further stated that both the deceased and A2 quarreled with each other and a panchayath was held in the village, a complaint was also lodged before the Police.

(xiv) P.W.9 Thiru.Kannan deposed that the Inspector of Police had asked them to come to the Police Station. Durairaj and himself went to the Police Station and signed the confession statement of the accused and in the seizure mahazar Ex.P4 to Ex.P7. He was treated as hostile and cross examined by the prosecution.

(xv) P.W.10, Dr.Maria Mahendran who had conducted autopsy deposed about the injuries on the dead body of the deceased. The dead body was in a charred condition. A cut injury found on the occipital region measuring 6×4×2 cm. Blebs, Blister, vesicle are seen all over the body. Blister contains only air mostly. 3rd degree burns over face, upper limbs, chest. 2nd degree burns over abdomen and lower limbs and he opined that the deceased would appears to have died due to asphyxia, intracranial Hemorrhage and burn injury. The postmortem certificate and final opinion were marked as Ex.P8 and Ex.P9.



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(xvi) P.W.11 Mr.Ramesh, Scientific Officer of the Forensic Lab states that there is no alcohol or poison found in the Viscera.

(xvii) P.W.12 Mr.Balamurugan, Assistant Director of Forensic Lab deposed that blood stain was found in (1) silver cup, (2) blood stained earth, (3) bill hook, (4) iron pipe measuring 91 cm. (M.Os. 6, 11, 13, 14). But no blood stain was found in the ordinary earth (M.O. 12). Further stated that the blood group sample collected from the dead body of the deceased and the blood stain found in item Nos.1, 2, 4 were also sent to the Deputy Director, Forensic Lab, Madurai for serology enquiry and received the report Ex.P13. As per the report, the blood group of the accused and the blood group found in the vessel, earth, bill hook, GI pipe belonging to human blood of 'A' group. The serology report was marked as Ex.P14.

(xviii) P.W.13, Thiru.Shanmugam, Wire man of Electricity Board states that Mela Kodumaloor and Keela Kodumaloor Village, which comes under his control/restriction and on the date of occurrence, there was no power cut in that area.



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(xix) P.W.14 Tmt.Thottichi, deposed that the deceased Arumugam and A1 were his neighbours. Two years back when she was sleeping, a sheep made noise, due to which they came out and noticed that the house of the deceased Arumugam was burning. Herself, her husband, Malaisamy went to the place of occurrence, and except the above, she was not aware of anything. She was also treated as hostile and was cross examined by the prosecution.

(xx) P.W.15 Thiru.Bharathiraja, deposed that both A1 and A2 are his neighbours. Deceased is the husband of A1. On 16.07.2018 at about 12.00 p.m., when he was sleeping, he heard somebody crying, and he came outside, P.W.1 requested him to call the ambulance, as the victim was alive. Therefore, he called 108 ambulance and the victim was then taken in the ambulance along with his mother.

(xxi) P.W.16 Tmt.Shanmugapriya spoken about the handing over of FIR to the Judicial Magistrate, Kamudhi at about 17.30 hours.



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(xxii) P.W.19 Thiru.Durairaj one of the witness to the

confession and recovery from A1, but did not support the case of prosecution. He stated that he went to the police station in connection with the Village festival, the Police obtained signature from him and P.W.

9. He was treated as hostile and cross examined by the prosecution.

(xxiii) P.W.20 Tmt.Jhansirani, who is the Investigating

Officer deposed about the registration of FIR, preparation of observation mahazar, rough sketch, recovery of material objects from the place of occurrence, inquest report, arrest, confession and recovery from the accused and about the final report.

12.The prosecution case rests on circumstantial evidence as no one directly witnessed the occurrence.

13.Motive is considered to have an important role if the prosecution case rests on circumstantial evidence as motive would help in completing the chain of circumstances.



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14. In this case, motive attributed for the offence is that A1 is the wife of the deceased Arumugam, A2 who is the half brother of the deceased. Both A1 and A2 had developed illegal intimacy, due to the above, deceased Arumugam had problem with A1 and left to Kerala. Thereafter, a panchayat was held and he came back from Kerala and resumed living with A1. Both A1, A2 disliked the intervention of Arumugam, so they planned to do away with him and on the date of occurrence, while he was sleeping in his residence A1 and A2 attacked him with bill hook and iron rod, thereafter, tied him with a rope in a pillar and set him on fire by pouring kerosene and killed him.

15. Now we have to see whether the prosecution established the motive for the crime.

16. P.W.1 mother of the deceased spoke about the problem between the deceased and the accused. In her complaint, Ex.A1 and in her evidence in the trial she clearly stated that both A1, A2 had illegal intimacy, and due to the above, both the deceased and A1 continuously had problem, several panchayat were held, but it was not solved. She further stated that even on the date of occurrence both had a fight, she pacified them and returned back to her house.



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17. The evidence of P.W.1 was supported by P.W.2. During trial, he stated that both the deceased and his wife A1 had family dispute. Himself and the villagers had a meeting and thereafter, both were living together.

18. P.W.4, Arjunan who is the neighbour of the deceased and P.W.1 also supported the version of P.W.1 by stating that both A1 and A2 had illegal relationship, the same was cautioned by the villagers. Due to the above reason, deceased Arumugam left to Kerala and thereafter, he came back and living with A1.

19. P.W.6, Thiru.Palanikumar, who is the neighbour of the deceased also spoke about the problem between A1 and her husband, viz., the deceased.

20. P.W.8, Tmt.Laxmi, neighbour of the deceased also stated that both the deceased Armugam and A2 Vel Murugan, had problem and a complaint was lodged and a meeting was held in the Police Station, the deceased Armugam therefore went to Kerala and was brought back to the village.



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21. The enmity/motive between the deceased, A1, A2 clearly established by the prosecution. Though the prosecution examined number of eye witnesses except P.W.1, P.W.8 nobody stated that they saw the accused in the place of occurrence with weapon.

22. As per the learned counsel for the appellants, the presence of P.W.1 is doubtful at the time of occurrence. However, it is established by the prosecution that P.W.1 is living in the neighbourhood of her son. She deposed in the trial that at about 12 hours, both the witnesses, Thottichi and Arjunan raised alarm that her son's house was burning. She went to her son's house and found nobody but her son tied in a pillar, and shouted as 'Amma, Amma'. Both the accused ran away from the place of occurrence with weapons. When she enquired her son, he informed her that A1 cut his neck with bill hook and A2 attacked him with iron rod on his head. She found injuries on his neck and head. She further stated that the deceased was taken to hospital in an ambulance and was admitted in the hospital, where he was treated.

23. The complaint was lodged by PW1 under Ex.P1, in the complaint it was contended that after she heard alarm raised by the



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witnesses Arjunan and Thottichi, she went to the house of her son and found both the accused viz., A1 with bill hook and A2 with iron rod fleeing away from the place of occurrence. She further stated that her son was found in a charred condition lying in the front side of the house. On enquiry, he informed her that while he was sleeping, accused suddenly attacked him with iron rod on his head and also inflicted injuries on his head and they tied him in a pillar and poured kerosene and set him ablaze. Herself and her husband took him in 108 ambulance and admitted him in the Government Hospital for treatment, but due to injuries, he succumbed to death at about 3.15 a.m. She further contented that on 17.07.2018, morning she went to the police station and lodged the complaint.

24. As per the complainant, when she entered into the house of her son both the accused in possession of weapons fled away from the place of occurrence, found her son lying in the front portion of the house. During trial, she stated that when she entered into the house, she found nobody, but she leaned in and found that both the accused had left the place of occurrence. Her son was tied in a cot. The Investigation Officer stated that he arrested both the accused on 18.07.2018 and recovered the



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weapons bill hook and iron rod (M.O.13 and M.O.14) in the presence of witnesses Kannan and Durairaj, but the witnesses did not support the claims regarding arrest, confession and recovery, and therefore turned hostile stating that their signatures were obtained in the Police Station.

25. Further one Mr.Subramanian, Head of the Village who was examined as P.W.2 stated that the Police came to the place of occurrence the next day and recovered the weapons, namely, iron rod, bill hook, bucket, oil-cane, etc.

26. P.W.8, Tmt.Lakshmi stated that on the date of occurrence at about 10.00, to 11.00 p.m., she found smoke emanating from the house of the deceased, Armugam, she went to the place of occurrence with P.W. 1, witness Malaisamy and other villagers to stop the fire. Both A1, A2, ran away with the weapons. But none of the Villagers supported her version.

27. Further as per P.W.1, the occurrence took place after 12 hours, whereas, P.W.8 stated that the occurrence took place at about 10.00 or 11.00 P.M, P.W.1 and, P.W.8 stated contrary statements about the



time of occurrence.

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28. P.W.1 further stated that her son was rescued from the place of occurrence, admitted in the hospital and was treated by the Doctor, however, the Investigating Officer did not obtain the accident register and produce the same to prove the correct time of occurrence. Further, the Doctor who had treated the deceased, when he was alive soon after the incident was not cited as a witness to prove the exact time at which the deceased was admitted in the hospital and for how long he was alive, and about the statement of the witnesses accompanied by the deceased to establish an understanding about the manner of the accident. Therefore, the evidence of P.W.1 and P.W.8 is highly doubtful in the aspect that if they saw the accused with weapon, as it was not established by the prosecution.

29. The learned Additional Public Prosecutor appearing for the State argued that it is proved by the prosecution that A1, wife of the deceased was residing with the deceased in the place of occurrence. Since the offence took place inside the house and soon after the occurrence, A1 was not found and absconded, it is on her to explain the true facts which were especially within her knowledge.



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30.He further argued that the weapon used for the commission was stained with blood and it is proved that the blood group of the deceased, blood stain found in the place of occurrence, and the weapons used for the offence are found to belong to the same blood group which was established by Forensic Expert Opinion and stated, the enmity between A1, A2 and deceased was clearly established by the prosecution, A1 who was available with deceased committed the offence with help of A2 and except A1, A2 nobody had enmity with the deceased and prayed to confirm the judgment of the trial Court.

31.It is true that almost all the witnesses stated that both the deceased Arumugam and his wife A1, were living together in the house where the occurrence took place. The same was not denied by A1. Though it was stated that A2 was also involved in the occurrence, but it is not proved he was present in the residence of deceased at the time of occurrence.

32.The occurrence took place inside the house where both the deceased and A1 were residing, the victim Arumugam sustained injury on his head and also sustained burn injuries all over the body. The



occurrence took place at midnight. All the witnesses in one voice stated that they had noticed smoke from the house of the deceased, went inside the house and witnessed the deceased with burn injury, head injury.

33.The learned counsel for the appellants try to establish that the deceased was having suicidal tendency as he had already attempted to commit suicide once, therefore, he committed suicide by pouring kerosene, and at that time, he fell due to which he sustained injury on the head. Even assuming that it is true for the sake of argument, it is well established by the prosecution that A1 and deceased were staying in the house where the occurrence took place. If really, the deceased committed suicide, A1 who was staying with him, soon after the occurrence could have raised alarm, and tried to save her husband or could have called the neighbors for help in order to save him or to take him to the hospital, when the occurrence took place she was not found in the place of occurrence, but absconded, which was spoken by all the witnesses. All the witnesses in one voice stated when they noticed smoke from the house of the deceased, they informed about the same to P.W.1, mother of the deceased, and when she came to the place of occurrence she made arrangements along with other witnesses to stop the fire. Thereafter, they



called the ambulance and sent the victim to the hospital. No explanation was offered on the part of A1 as to why she was not there but it was proved that she was absconding, which created serious doubt in the the minds of the Court about her absence.

34.The weapons available in the place of occurrence found with blood stains, the blood group of the deceased was collected and was sent for grouping test, Ex.P13 is the report on control sample, which reveals that the blood group of the deceased was examined and found that it belongs to 'A' group. The blood stain found in earth, bill hook, G1 pipe found human blood and belongs to 'A' group as per Ex.P12. The viscera report clearly shows that there is no poison or alcohol deducted in the stomach and intestine, liver, kidney, blood and preservative of the deceased. The Doctor who had conducted autopsy clearly stated that the deceased died due to asphyxia, intracranial Hemorrhage (blood clot) , burn injury and suffocation.

35.The learned counsel for the appellants further stated that there is a possibility of the head injury if the deceased had a fall, but the same could not be believed as the Doctor who conducted autopsy clearly



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stated that a cut injury measuring 6 x 4 x 2 cm was found in the occipital region of the deceased, further when he cut the skull, blood clot was found in the brain and a fractured bone was found on its backside, which shows that such serious injuries would not have occurred if he had a fall.

36.As far as the burn injury found on the dead body, if he committed self immolation he would have sustained burn injuries all over his body. But in this case the deceased sustained injuries on his frontal region of face, upper hands, chest, stomach, and legs not on head and backside, which proved that some one poured kerosene and had set the fire.

37.Therefore, the argument putforth by the appellants counsel that the deceased committed suicide by self immolation and had a fall due to which sustained head injury is proved as false. A1 who was staying with the deceased and was last seen with him had not offered any explanation about her absence and explained where was she staying at the time of occurrence. The prosecution clearly established that she had a motive to do away the deceased as she had an illegal affair with the second accused. The same was disliked by the deceased, he left her and



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went to Kerala. She was cautioned by PW1 and other villagers, the deceased was requested to return from Kerala and she was advised to live with him, and therefore, there is motive for A1 to kill him. Further, she was last seen together with the deceased before the occurrence, which was spoken by many witnesses, it was stated that at that time, she had a quarrel with him. The occurrence did not happened at any other place, but in the private place where both the deceased and the first accused were living together, the deceased was set ablaze, and had head injuries. All the neighbors and, PW1, found him in a serious condition. But the first accused was not found in the place of occurrence. She left suspiciously, and did not report the incident to the police or to the neighbors. The blood stained earth, weapons recovered from the place of occurrence were found belonging to the blood group of the deceased. Except A1 and A2, no other persons had any previous motive/enmity with the deceased.

38.During 313 Cr.P.C. questioning, she has not specifically denied that she was residing with the deceased on the date of occurrence. Onus under Section 106 of the Indian Evidence Act shifts on accused, but she had not offered any explanation.



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39. For better understanding, Section 106 of Indian Evidence

Act reads as follows :

“106. Burden of proving fact especially within knowledge. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

.....

Comments

This section states that when any fact is specially within the knowledge of any person the burden of proving that fact is upon him. This is an exception to the general rule contained in section 101, namely, that the burden is on the person who asserts a fact. The principle underlying section 106 which is an exception to the general rule governing burden of proof applies only to such matters of defence which are supposed to be especially within the knowledge of the defendant. It cannot apply when the fact is such as to be capable of being known also by a



person other than the defendant.

It was held that when various links in the prosecution case have been satisfactorily made out pointing the accused as the probable assailant and the proximity of the accused to the deceased as regards the time and situation, and if the accused does not offer any explanation which might afford a reasonable basis for a conclusion consistent with his innocence such absence of explanation or false explanation would be an additional link to the prosecution links. Following this principle in Re : Naina Md (AIR 1960 Mad 218) it was held that though section 106 does not cast any burden on the accused, if some facts are specially within his knowledge he has to prove the same which could support any theory or hypothesis compatible with his innocence.”

The prosecution clearly established that A1 was last seen with deceased soon after the occurrence after she had quarrelled with him. She had a motive to kill him as she had illegal intimacy with A2, on the date of occurrence she alone was staying with him and around midnight the deceased was attacked on his head and was set ablaze with kerosene, but A1 who was residing with him suddenly disappeared without offering any explanation, it is a relevant factor and are the appropriate



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circumstances to hold her guilty for the injury of the deceased and, it was to the exclusive knowledge of the accused, since she has not offered any explanation as to the circumstances in which the death occurred which raises presumption against her regarding if she is responsible for his death, we hold that she alone has committed the offence. The trial Court after analyzing the evidence available, convicted the first accused for life under section 302 IPC, and we do not wish to interfere with the judgement of the trial court and confirmed the judgement dated 18.03.2020. We conclude that there is no reason available to interfere with the judgment of the trial Court with regard to A1 alone.

40.However, though the second accused also had enmity against the deceased Arumugam, the presence of the second accused was not proved by the prosecution properly, no witness stated that both A1, A2 and the deceased were last seen together. PW1, PW8 stated that they found A1 and A2 with weapons, but the confession and recovery was not proved. The witness before whom the accused was arrested was also not supported by the prosecution case, and therefore conspiracy between A1and A2 for the crime was not proved. Except the fact that he was having illegal affair with the wife of the deceased, no material is



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available to fix the second accused with the crime and this Court could not find any material to fix the second accused with the crime and the prosecution has failed to establish that A2 was available at the place of occurrence and inflicted injury on him. Therefore, the conviction is passed against the second accused is hereby set aside. Therefore, A2 is acquitted from the charges under Sections 302 and 449 IPC.

41.In the result, the Criminal Appeal in Crl.A.(MD)No.332 of 2020 is allowed. The conviction under Sections 302 and 449 IPC passed by the learned Principal District and Sessions Court, Ramanathapuram, dated 18.03.2020 in S.C.No.35 of 2019 is set aside. A2 is acquitted from the charge under Sections 302 and 449 IPC. The appellant/A2 is to be set at liberty forthwith, unless his detention is required in connection with any other case. The bail bonds executed, if any, shall stand cancelled. The fine amounts, if any paid, shall be refunded to the appellant/A2.

42.In the result, the Criminal Appeal in Crl.A.(MD)No.361 of 2020 is dismissed. The conviction under Section 302 IPC passed by the learned Principal District and Sessions Court, Ramanathapuram,



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dated 18.03.2020 in S.C.No.35 of 2019 is confirmed with regard to A1 alone. The Trial Court is directed to incarcerate A1 for the remaining period of sentence forthwith.

(G.R.S., J.) & (R.P., J.)
22.01.2025

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

RM

Note : Issue order copy on 28.01.2025

To

- 1.The Principal District and Sessions Court,
Ramanathapuram.
- 2.The Inspector of Police,
Abiramam Police Station,
Ramanathapuram 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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CrI.A(MD)Nos.332 & 361 of 2020

G.R.SWAMINATHAN, J.
AND
R.POORNIMA, J.

RM

Judgment in
CrI.A(MD)Nos.332 & 361 of 2020

22.01.2025