

*Crl.A(MD)No.276 of 2021*

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 19.02.2025

Pronounced on : 10.03.2025

CORAM:

**THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN**

**AND**

**THE HONOURABLE MS.JUSTICE R.POORNIMA**

**Crl.A(MD)No.276 of 2021**

Kaleeswaran

.. Appellant/Sole Appellant

Vs.

State represented by,

The Inspector of Police,

Kaenikkarai Police Station,

Ramanathapuram District.

(In Crime No.270/2012).

.. Respondent / Complainant

**PRAYER:** Criminal Appeal is filed under Section 374 (2) of the Code of Criminal Procedure, against the judgment of conviction and sentence dated 30.07.2019 in S.C.No.101 of 2015 on the file of the learned Sessions Juge, Mahalir Neethimandram (Fast Track Mahila Court), Ramanathapuram.



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For Appellant

: Mr.M.Sahul Hameed (on record)

: Mr.K.Prabhu- Amicus Curiae

For Respondent

: Mr.E.Antony Sahaya Prabhakar  
Additional Public Prosecutor

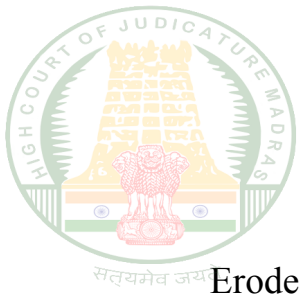
### **JUDGMENT**

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

The sole accused in S.C.No.101 of 2015 on the file of learned Sessions Judge, Fast Track Mahila Court, Ramanathapuram is the Appellant herein.

#### **The case of the prosecution:**

2. The accused Kaleeswaran and the deceased Pushpavalli got married in the year 2003. They were blessed with two children. In the year 2010, the accused developed intimacy with a widow by name Muneeshwari and deserted his wife and child. He started living with Muneeswari at



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Erode. The deceased gave complaint to the Police and thereafter, the accused rejoined his wife. Subsequently, the second child born to them. However, there was frequent quarrel between the spouse. The accused continued his extra marital affair and used to torture the deceased. The deceased had reported to her parents about this and they used to pacify her. While so, after two days of staying away, the accused came home on 26.05.2012 at about 7.30 pm. The deceased questioned the accused for not coming to the home and both quarrelled for about half an hour. The accused in fit of anger and with intention to kill Pushpavalli for being an obstacle for his affair, took a firewood log and hit Pushpavalli on her head, left hand and right hand repeatedly. On hearing the scream of Pushpavalli, members living in the neighbouring house came and saw the accused coming out from the house running. When one of them by name Velu tried to hold the accused, he was threatened showing the firewood log.

3. On intimation from his relative, the father of the deceased went to his daughter's house at Sivagnanapuram and saw his daughter's body with injuries. After knowing that his daughter was fatally attacked by



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the accused, he went to the Kenikarai Police Station and gave a written complaint. On receipt of the complaint on 26.05.2012 at 21.30 hrs, FIR registered under Section 302 IPC in Crime No.270 of 2012. A copy of the printed FIR was forwarded to the Jurisdiction Magistrate who received it at 11.30 pm on the same day.

4. Mr.Soundrapandian, Inspector of Police holding additional charge of Kenikarai Police Station, took up the investigation. He recorded statements of witness, prepared observation mahazar, rough sketch and conducted inquest. He recovered blood stained soil from the scene of crime. On 27.05.2012 at about 4.00 pm arrested the accused and on his confession recovered the blood stained wooden log near a palm tree lying in the vacant land of Thangaraj in the presence of Velusamy (VAO). The body of Pushpavalli was sent to Ramanathapuram Government Hospital through Pandi, Head Constable, for autopsy. Dr.Anandha Chokkalingam conducted post-mortem and opined that Pushpavalli died due to the injuries on her head.



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5. On committal to the Court of Sessions, the accused was tried for the charges under Sections 302 and 506(i) IPC. The prosecution, to prove the charges, examined 18 witnesses, marked 12 exhibits and 6 Material Objects. The trial Court held the appellant/accused guilty of offence punishable under Section 302 IPC. Sentenced to undergo life imprisonment and to pay fine of Rs.2,000/-, in default, 3 months simple imprisonment. However, acquitted him for offence under Section 506(i) IPC. Being aggrieved by the above judgment of conviction and sentence dated 30.07.2019, the appeal is preferred.

6. The learned Counsel on record Mr.M.Sahul Hameed and the Amicus Curiae Mr.K.Prabu appointed by this Court to assist, appeared and made their submissions also submitted written notes of arguments. The learned Additional Public Prosecutor for the State, placed his submissions to sustain the judgment impugned.

7. This is a case of circumstantial evidence. The circumstances incriminating the accused are:-



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a) The accused and the deceased were living under same roof.

The deceased found dead with injuries on her head and limbs. The accused was seen coming out of the house carrying a blood stained firewood log.

b) On the information given by the accused in his confession statement, the blood stained wooden log was recovered.

8. According to the final report, on hearing the scream of Pushpavalli, Velu(PW-2)-resided next to the house of the deceased and Sumathi(PW-7)-the owner of the house in which the deceased and the accused were living, rushed to the house of the accused and saw the accused coming out carrying a blood stained firewood log. PW-2 tried to apprehend the accused and had a tussle with him. The accused warned PW-2 not to interfere in his family matter and threatened him showing the fire wood log and ran away. However, before the Court, both PW-2 and PW-7 did not support the prosecution. They were permitted to be cross-examined by the prosecutor after declaring them as hostile witnesses.

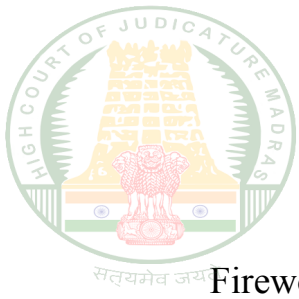


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9. Having found that PW-2 and PW-7 had not supported the case of the prosecution regarding intimidation to attract offence punishable u/s 506(i) of IPC, acquitted the accused. Nonetheless taking note of the fact that the accused did not cross examine PW-1 and the evidence of PW-7 (hostile witness) who had deposed that the accused and the deceased were living under the same roof and on the date of occurrence she heard a peculiar noise and on enquiry she came to know that there was fight between husband and wife. Taking this as proof of last seen together alive, convicted the accused under Section 302 IPC.

10. That apart, the trial court had taken into consideration the fact that based on the information given by PW-2, written complaint (Ex.P-1) was given by PW-1 on 26.05.2012 at 21.30 hrs. The FIR copy received by the Judicial Magistrate at 23.10 hrs on the same night. In the complaint, reference about the fire wood log as the weapon used to commit the crime is found. The said firewood log was recovered from the field of Thangaraja on 27.05.2012 at 16.00 hrs under mahazar Ex.P-6 in the presence of PW.8-the Village Administrative Officer. The recovery of the



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Firewood log (M.O.6) was on the information given by the accused in his confession. The place the firewood log thrown was within the exclusive knowledge of the accused. The presence of the accused at the scene of crime, his conduct fleeing away from the house without taking his wife to hospital and not visiting the house were taken against the accused to draw adverse inference.

11. The learned counsels appearing for the appellant submitted that, law relating to circumstantial evidence been dealt in catena of judgments by the Courts and the Panchsheel of the proof of a case based on circumstantial evidence is laid in ***Sharad Birdhichand Sarda –vs- State of Maharashtra (1984(4)SCC116)*** and same consistently followed and referred by the Courts. To convict a person based on the circumstances, the chain of circumstances should be intact. If the link is severed and chain not complete, conviction cannot sustain. The prosecution ought to establish, the accused must be guilty and not may be guilty.



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12. Pointing out that none of the prosecution has established the fact that the accused and the deceased last seen together. However, on vague conjuncture, the trial Court has held that from the uncontroverted evidence of PW-1 who is a hearsay witness, the accused was seen together. It was contended that, the first link in the circumstance itself not established by the prosecution.

13. The recovery of M.O.6 is challenged by the appellant for not examining the field owner-Thangaraja. The firewood is a object available in common and found in any place. The prosecution has failed to place the serology report to prove the blood stains on the wooden log belongs to human and it tally with the blood group of the deceased.

14. The extra marital affair with Muneeshwari seems to be the motive projected by the prosecution. The said motive not proved by examining the said Muneeshwari or by placing the criminal complaint alleged to have been given by the deceased in the year 2010 reporting the elopement of the accused along with the said Muneeshwari.



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15. To buttress the arguments, the following judgments are relied by the learned Counsels:-

**1) Sankar –vs- State of Maharashtra : [Crl.A.No.954/2011, dt: 15.03.2023].**

**2) Kalinga –vs- State of Karnataka : [2024 (4) SCC 735].**

16. The five golden principles, which constitutes the Panchsheel of proof of a case based on circumstantial evidence are:-

1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The Court should indicate the ‘accused must or should be guilty’ and not ‘may be guilty.’

2) The fact so established should be consistent only with the hypothesis of the guilt of the accused. They should not be explainable on any other hypothesis except the accused is guilty.

3) The circumstances should be conclusive in nature and tendency.

4) They should exclude every possible hypothesis except



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the one to be proved; and

5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that the act must have been done by the accused and the accused alone.

17. A conviction can sustain if the last seen theory, motive and recovery of incriminating article is pursuance of the information given by the accused is proved beyond doubt.

18. On careful examination of the evidence, we find the following facts are not controverted:

1. Marriage of the appellant and the deceased Pushpavalli was solemnized in the year 2003.

2.The appellant and the deceased were residing at Sivagnanapuram village, Ramanathapuram District within the jurisdiction of Kenikarai Police Station.

3. On 26.05.2012, at about 20.00 hours the father of



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Pushpavalli saw her in pool of blood with injury on her head and both hands lying inside the house in which she was residing along with Kaleeswaran(accused).

19. The learned Sessions Judge taking into consideration that death has occurred inside the house where the accused alone was living with his wife and he is answerable for her death. No doubt the accused was living with the deceased Pushpavalli in the said house. But, at the same time, it is the case of the prosecution that he was not living with her permanently and frequently used to visit his concubine house and even on the date of occurrence, the quarrel between the appellant and the deceased was with regard to his non-visit of the house for the past two days. PW2-Velu and PW7 are the prosecution witnesses who were supposed to depose that they saw the accused coming out of the house carrying blood stained wooden log. Unfortunately these two witnesses have turned hostile and they have not incriminated the accused to satisfy the theory of last seen.



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20. The chain in the sequence of circumstantial evidence must be unbroken whereas the first link in the chain itself not proved.

21. Yet another link in the circumstances is the motive. According to the prosecution the appelllant murdered his wife since she was a hurdle to his extra-marital life. For that purpose, the prosecution ought to have laid evidence to show that the appellant had illicit relationship with one Muneeshwari. Unfortunately, the prosecution not examined Muneeshwari. The existence of a person by name Muneeshwari and her reationship with the accused not proved through evidence.

22. Further more, the mother of the deceased in the cross-examination admits that till the death of her daughter, the relationship of her daughter and her son-in-law was cordial. This goes contrary to the case of the prosecution that the appellant and the deceased used to fight frequently due to his extra marital affair.



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23. Surprisingly, the Investigating Officer has not collected any material to show there was any extra marital relationship between the accused and the said Muneeshwari and such relationship caused disharmony between the appellant and the deceased, leading to commit the murder.

24. The trial Court believing the recovery of M.O.6-wooden log based on the confession given by the accused in the presence of the Village Administrative Officer and the blood stain found in the wooden log had linked the appellant to the crime. However, the trial Court has failed to take note of the fact that the material object-M.O.6 is a fire woodlog which is available easily everywhere in the village. The log which was sent for biological examination was also sent for serological test. But the serological report not placed before the Court to ascertain whether the blood found in the wooden log belongs to human and the blood group tallying with the blood group of the deceased.



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25. Mere recovery of the wooden log is not sufficient to hold the accused guilty. The prosecution should establish the fact that the wooden log was used to assault the deceased and such assault caused death of the deceased. These two links in the circumstances not proved in this case beyond doubt. When disclosure of information in the confession statement and the recovery is not proved, other links in the chain of circumstances gets broken. In this connection, it is profitable to refer the judgment of the Hon'ble Supreme Court rendered in ***Bijender alias Mandar v. State of Haryana reported in 2022(1) SCC 92.***

*“15. The short question that falls for our consideration thus is whether the conviction of the Appellant on the strength of the purported disclosure statement (Ex.PD) and the recovery memo (Ex. PD/2), in the absence of any corroborative evidence, can sustain?*

*16. We have implored ourselves with abounding pronouncements of this Court on this point. It may be true that at times the Court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt. 1 We may hasten to add that circumstances such as (i) the period of interval between the malfeasance and the disclosure; (ii) commonality of the recovered object and its*



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*availability in the market; (iii) nature of the Vijay Thakur vs. State of Himachal Pradesh, (2014) 14 SCC 609 Page | 9 object and its relevance to the crime; (iv) ease of transferability of the object; (v) the testimony and trustworthiness of the attesting witness before the Court and/or other like factors, are weighty considerations that aid in gauging the intrinsic evidentiary value and credibility of the recovery.”*

25. In the light of the fact that two star witnesses of the prosecution, namely, PW2 and PW7, having turned hostile, the prosecution in this case has failed to inspire the confidence of this Court with the available evidence that to hold the accused guilty. Motive and last seen theory are the two important links in the chain of circumstances. The prosecution in this case has failed to prove those two links beyond doubt. Having failed to correlate M.O.6 to the crime, the appellant gets the benefit of doubt. Without appreciating the prosecution case properly, the trial Court, on the surmise has held that the accused/appellant may be guilty of the offence and had convicted him. As repeatedly pointed out by the Hon'ble Supreme Court, in the case of circumstantial evidence, the test is the satisfaction the accused 'must' and 'should' be the perpetrator of the



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crime and not 'may be' the perpetrator of the crime.

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26. As a result, the judgment of conviction and sentence rendered by the trial Court is set aside holding that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and the judgment of conviction based on broken link of circumstances cannot be sustained.

27. In fine,

(i) This criminal appeal is **allowed**.

(ii) The appellant is acquitted of the charge under Section 302 IPC. The judgment of conviction and sentence imposed in S.C.No.101 of 2015 dated 30.07.2019 on the file of the Mahila Court, Fast Track Court, Ramanathapuram is set aside.

(iii) The appellant is directed to set at liberty forthwith. Bail bond if any executed shall stand discharged.



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28. Before concluding, this Court records the word of appreciation to the *amicus curiae* who had prepared the case meticulously and assisted this Court to arrive at the above decision.

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

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

To

1.The Sessions Juge,  
Mahalir Neethimandram  
(Fast Track Mahila Court),  
Ramanathapuram.

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  
Crl.A(MD)No.276 of 2021**

**10.03.2025**