



Crl.A(MD)Nos.294 of 2020 & 476 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.02.2025

Pronounced on : 25.03.2025

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

Crl.A(MD)Nos.294 of 2020 & 476 of 2021

Crl.A(MD)No.294 of 2020:

Easwari

.. Appellant/Victim

Vs.

1.Gopal @ Karungopal

2.Kanniyappan

3.Gurusamy @ Palkara Gurursamy @ Kakkayan

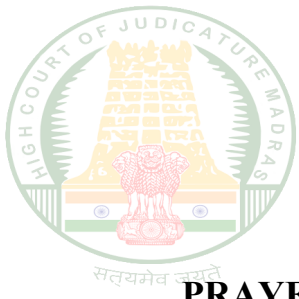
4.Senthilkumar @ Senthil

5.Malayali

.. Respondents 1 to 5 / A1 to A5

6. State through,
The Inspector of Police,
Mayanoor Police Station,
Karur District.
(In Crime No.39/2018)

.. 6th Respondent/Complainant



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PRAYER: Criminal Appeal is filed under Section 372 of the Code of Criminal Procedure, against the judgment dated 07.07.2020 in S.C.No.25 of 2019 on the file of the learned Additional Sessions Judge cum Fast Track Mahila Court, Karur and to set aside the acquittal order passed against the accused Nos.1 to 5.

For Appellant : Mr.N.Ananda Padmanabhan
Senior Counsel
for M/s.APN Law Associates

For Respondents : Mr.E.K.Kumaresan
for R1 & R2
: Mr.D.Kirubakaran
for R3 & R4
:Mr.S.Karthick Ramkumar
for R5
:Mr.A.Thiruvadikumar
for R6

Crl.A(MD)No.476 of 2021:

The Inspector of Police,
Mayanur Police Station,
(Crime No.39/2018)
State rep. by
The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

.. Appellant/Complainant

Vs.

1.Gopal @ Karungopal



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2.Kanniyappan

3.Gurusamy @ Palkara Gurursamy @ Kakkayan

4.Senthilkumar @ Senthil

5.Malayali

.. Respondents / A1 to A5

PRAYER: Criminal Appeal is filed under Section 378(1)(a)(b) of the Code of Criminal Procedure, against the judgment dated 07.07.2020 in S.C.No.25 of 2019 on the file of the learned Additional Sessions Judge/Fast Track Mahila Court, Karur.

For Appellant : Mr.A.Thiruvadikumar
Additional Public Prosecutor

For Respondents : Mr.E.K.Kumaresan

COMMON JUDGMENT

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

Crl.A(MD)No.294 of 2020 is filed by PW-1/wife of the deceased. Crl.A(MD)No.467 of 2021 is filed by the State. These two Criminal Appeals are against the judgement of acquittal passed on 07.07.2020 in S.C.No.25 of 2019 on the file of Additional Sessions Judge/Fast Track Mahila Court, Karur.



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2. On 27.02.2018, morning at Pichaimuthu land, Kumaran Nagar, Poonjolaipudur, within the territorial limits of Mayanur Police Station, the dead body of Amalraj with cut injuries on his neck, with abrasions on forehead and cheek was found. At about 10.30 hours, Eswari, W/o.Amalraj (PW-1) set the law into motion through her complaint Ex.P-1 addressed to the Sub-Inspector of Police, Mayanur Police Station. PW-16, Natesan, Sub Inspector received the complaint and registered the FIR in Crime No.39 of 2018 (Ex.P-22) under Section 302 IPC mentioning Gopal @ Karungopal(A-1), Kanniappan (A-2) and Palkara Gurusamy @ Kakkayan (A-3) as the suspects.

3.Thiru. Rajmohan, the Inspector of Police (PW-17) took up the investigation, went to the spot, prepared observation mahazar (Ex.P-23) and rough sketch (Ex.P-24). Conducted inquest and prepared the inquest report (Ex.P-25). Sent the body of Amalraj to the Government Hospital, Karur with request letter to conduct autopsy. Suspected incriminating materials like blood stained soil, empty liquor bottles and the two wheeler bearing registration No: DL 6 SR 7168 were recovered under mahazar Ex.P-26.



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4. On 28.02.2018, near Panchapatti State Bank, A-1 and A-2 were arrested at 10.00 am by PW-17. On their confession, the motive and the manner in which the offence committed came to light. The confession of A-1 lead to the discovery of the fact that A-1 and A-2 with the aid of A-3 hired A-4 and A-5 to assist them to kill Amalraj. On the information provided, the blood stained shirt of A-1 from thorn bush behind the KSRV School, Kovakulam was recovered under mahazar Ex.P-10. The two wheeler bearing registration No:TN-47-AW-4539 used by A-1 and A-2 was seized under mahazar Ex.P-7. From A-2, Rs.10,000/- was recovered being his share of hire money.

5. On the same day, at about 14.30 hours, Senthilkumar (A-4) and Malayali (A-5) were arrested near Uppidaimangalam – Santhaipettai Gate, while both were proceeding in a two wheeler bearing Registration No:TN-59-BE-4885 Honda City 110 DREAM. They both confessed their guilt and the receipt of Rs.25,000/- each from Gurusamy (A-3) for assisting A-1 to A-3 to kill Amalaraj. The two wheeler and the money were recovered from them under Mahazar Ex.P-12 and Ex.P-14.

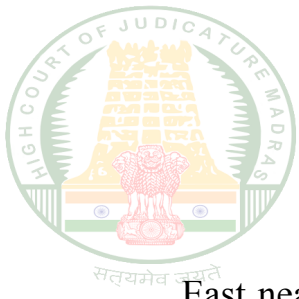


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6. Gurusamy (A-3), on 28.02.2018, after committing the crime surrendered before learned Judicial Magistrate, Paramathi. Knowing that, PW-17 got order for police custody and interrogated him on 09.03.2018. On his information, the blood stained clothes M.O.7, M.O.8 and the knife-M.O. 10, thrown near the bush behind Sankaramalaipatti Malai Temple were recovered under mahazar Ex P-16.

7. The case of the prosecution as projected through its witnesses is that, there was an enmity between A-1 and A-2 families with the deceased. A-3 is the old associate of the deceased. On 26.02.2018, at about 2.00 pm, A-1, A-2 and A-3 came to Amalraj house and called him to come for compromise talk. PW-1 tried to stop her husband going along with them. However, the deceased prevailed upon her and went with them in his two wheeler. At that time her sister Tulasi (PW-3) was also present. Thereafter, PW-3 Subramanian (husband of PW-2) saw A-1 and A-2 in a two wheeler, A-3 in another two wheeler and the deceased in his two wheeler passing together near Old Jayamkondan Community Hall. PW4-Maruthanayagam, on 26.02.2018 while he was returning from Karur towards Seaangal via Uppidaimangalam, saw Malayali(A-5) and Senthil(A-4) proceeding towards



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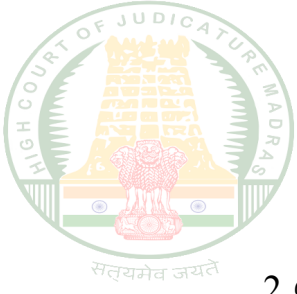
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East near Madukarai TASMAL shop. Then, near Munaiyanoor turn, he saw Amalaraj(deceased), A-1 to A-3 coming in two wheelers from West. Next day, Amalaraj was found dead in the land of Pichaimuthu.

8. PW-5 and PW-6, the signatories to the observation mahazar and seizure at the spot of crime turned hostile. PW-7, father of the deceased had deposed about the previous enmity. Regarding last seen, the evidence is only hearsay. PW-8 and PW-9 turned hostile. The case of the prosecution is that A-1 sold paddy to PW-8 and cattle to PW-9, to raise money to meet out the expenses for hirelings not supported by these witnesses. PW-10, Karthikeyan(Village Administrative Officer) is the signatory to the recoveries based on the confessions of A-1, A-2, A-4 and A-5 on 28.02.2018 between 11.10 am and 17.00 hrs . He is also the signatory to the recovery of weapon and dress of A-3 under mahazars-Exs.P-16,17 and 18, on 09.03.2018 between 17.30 hrs and 19.00 hrs.

9. PW-11, Dr.Sankar who conducted autopsy, had noted the following antemortem injuries on Amalaraj :

1.வலதுபக்க கழுற்றில் 7 X 2 cm



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2.இடது பக்க நெற்றியில் 5 X 2 cm

3.வலது பக்க கன்னத்தின் மேற்புறத்தின் உள் பகுதியில் 3 X 2 cm

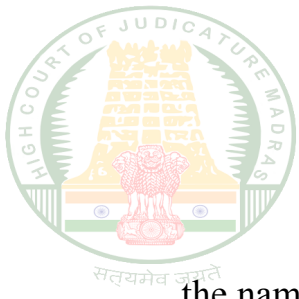
4.இடப்பக்க கன்னத்தின் மேற்பகுதியின் வெளிப்பகுதியில் 4 X 2 cm

காணப்பட்டது.

10.In his postmortem report Ex.P-20, he had opined that the death could have occurred due to shock and haemorrhage sustained due to neck injury. Rigor mortis passed off. The lab reports, Ex.P-38 and Ex.P-39 though found human blood in the sample collected, the serology test was inconclusive regarding the group.

11.PW-12 to PW-15 are the police constables, who assisted PW-17, the Investigating Officer in the investigation. PW-18 is the Inspector, who succeeded PW-17, completed the investigation and filed the final report.

12.The trial Court found that being a case of circumstantial evidence, the prosecution failed to prove the last seen theory without break in the chain. The contradiction among the evidence of PW-3, PW-4 with the evidence of PW-1 and PW-2, the interpolation in the complaint correcting



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the name and adding the word few others, delay in lodging the complaint had created doubt about the first information. Hence, the accused were acquitted for want of proof beyond doubt.

13.The learned Additional Public Prosecutor appearing on behalf of the State, in support of the appeal against acquittal submitted that, the deceased Amalraj borrowed money from Krishnan few years back and in the money transaction, there was dispute between Amalraj and Krishnan. In that dispute, Krishnan was murdered. Being enraged by this, A-1 and A-2, who are the brothers of Krishnan, met during the death of Krishnan's wife hatched conspiracy along with A-3 to A-5 to kill Amalraj. A-3 agreed to arrange for the murder and received money from A-1. Thereafter, on 26.02.2018, A-1 to A-3 went to the house of the deceased and took him to an isolated place by deceit. A-5, offered liquor to Amalraj, on consumption of liquor, Amalraj fell inebriated. Taking advantage, A-4 and A-5 held the legs of the deceased; A-1 and A-2 held the hands of the deceased. A-3 cut the throat of the deceased with soori knife-M.O 3.



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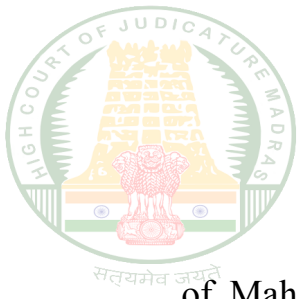
14.The prosecution examined 18 witnesses and marked 40 exhibits and 23 material objects.

15.Through these evidence the motive, last seen, medical evidence and recovery on confession well proved and sufficient to complete the chain of circumstances. Despite reliable evidence like PW-1 to PW-4 overweighing minor contradictions, the trial Court disbelieved the prosecution case. The finding of the trial Court is perverse and without proper appreciation of the evidence. The trial Court erred in considering the antecedent of the deceased instead of considering the positive evidence against the accused.

16.In the appeal against acquittal filed by PW-1, the learned Senior Counsel for the appellant contended that:-

a) No serious contradiction between the testimony of PW-1, PW-2 and PW-3 to brush aside their cogent evidence as not reliable.

b) A-1 Gopal @ Karungopal, A-2 Kanniappan, Krishnan, Mahalingam and Rasammal (mother of the deceased) are siblings. The deceased is the son of Rasammal. Earlier, the deceased married the daughter



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of Mahalingam but deserted her and started living with PW-1, a married lady. In a money dispute the deceased along with others killed Krishnan and the murder case against the deceased and others is pending. Being aggrieved by the conduct of the Deceased, who spoiled the life of Karpagam, the daughter of their brother Mahalingam and also killed other brother Krishnan in a money dispute, A-1 and A-2 had a strong motive to eliminate the deceased. The motive spoken by PW-1 to PW-3 and PW-7 not disproved by the defence. However the trial Court failed to consider the trite law that in case of circumstantial evidence motive plays a vital role and a prime link in the chain.

c) Through the evidence of PW-1 and PW-3, the prosecution has established without any pale of doubt, that A-1, A-2 and A-3 came to the house of Amalraj (the deceased) on 26/02/2018 at 2.00 pm and took the deceased along with them. PW-2 and PW-4 had seen them together going in their respective vehicles. The next day, Amalraj was found dead in the land of Pachaimuthu. The blood stain clothes of A-1 (MO 3) and A-3 (MO 7 and MO 8) recovered under Mahazars in the presence of VAO. Therefore, the last seen theory as well the recovery of the blood stains clothes of A-1 and A-3 is the strong link in the chain of circumstances which points the guilt of



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the accused to the crime. Hence, the Court below ought to have convicted the accused .

d) The Court below ought not to have disbelieved the recovery based on confession, because the VAO does not belong to that village. The reason assigned by the trial Court to disbelieve seizure of incriminating material evidence on the confession is not legally sustainable.

e) The trial Court erred in carried away by the antecedent of the deceased without appreciating the clinching evidence placed by the prosecution through circumstances, the information given by the accused persons, which were exclusively within their knowledge disbelieved by the trial Court. This has lead to miscarriage of justice.

17.Per contra, the learned counsel appearing for the respondents/accused submitted that, there is no direct or circumstantial evidence incriminating the accused persons. The motive alleged is not spoken by any independent witnesses or proved through documentary evidence. The vague statements of the interested witnesses cannot be elevated to reliable evidence.



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a.The corrections and interpolations in the complaint as well as in the FIR remains unexplained by the prosecution. As per the evidence of PW-1, on 26.02.2018 at about 2.00 pm A-1 to A-3 came to her house and from the street called the deceased for peace talk. At that time, her sister Tulasi PW-3 was also with them in the house. Whereas, PW-3 had deposed that, among A-1 to A-3, only A-3 came inside the house and called Amalraj for peace talk. A-3 was inside the house for about 10 minutes. This contradiction has made the evidence of A-1 and A-2 unreliable.

b.PW-2 and PW-4, who were examined by the prosecution to prove that they saw the accused A-1 to A-3 along with the deceased at the relevant point of time, had miserably failed to mention the time they saw the deceased alone along with the accused persons together.

c.PW-3, in her chief examination, had not said anything about the deceased last seen in the company of A-1 to A-3 to corroborate PW-1 and PW-2. Like wise, PW-4, in the cross examination, admits that he did not inform to PW-1 or PW-2 that he saw the deceased along with A-1 to A-3 on 26.02.2018 near Madukarai TASMACH shop. Thus, the evidence of PW-1, PW-2, PW-3 and PW-4 are contradictory and not consistent to hold the deceased was found in the company of the accused soon before his death.



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d.PW-1, in her chief examination, had deposed that PW-2 and PW-4 informed that they saw the deceased along with A-1 to A-3 even before she gave the complaint-Ex.P-1. If that is true, then in Ex.P-1, she would have mentioned about the information given by PW-2 and PW-4. The vital fact not found in the earliest document, but introduced later by the prosecution found to be false from the contradictions among the witnesses.

e.The complaint, time of occurrence and recovery in this case stands unproved. The trial court had taken note of the antecedent of the deceased only to rule out whether there is any other probability than what the prosecution has projected. PW-1 had admitted that there are several enemies to her husband. By surmises the respondents were wrongly prosecuted.

18.Heard the rival submissions put forth by the learned counsel.

19.It is a case of acquittal. No direct evidence, but only evidence for last seen together and the confession to VAO available in support of the prosecution. The trial court found the prosecution evidence is weak. Chains of circumstances broken and the recovery is highly doubtful. In view of multiple criminal cases against the deceased, the trial Court had oppined



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there is a probability that the offence might have been committed by somebody else also and not the accused persons.

20.The litmus test in an appeal against acquittal is whether the view of the court below is probable or need to be interfere for its perversity. If the view of the trial court is also possible, the said possible view need not be substituted with another probable or possible view by the appellate court. The learned counsel for the respondents submitted that the appeals are deserved to be dismissed. Sine does not satisfy the twin test and the accused persons been bestowed with double benefit by the trial Court.

21.The testimony of each of the prosecution witness when examined individually, this Court finds PW-1 complaint carries correction and interpolation. Apart from three known persons, who alleged to have come to her house and taken her husband along with them, an attempt been made to add few more unnamed persons by interpolation. By addition two more accused (A-4 and A-5) at the later point of time, the interpolation becomes more visible.



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22. Who is the scribe of Ex.P-1 id not identified. PW-1 had categorically said that it was not written by her. PW-2 who accompanied PW-1 not certain who wrote it and also not certain where it was written. When the prosecution rely on the last seen together theory, the proximity and the link in the chain should be intact. In this case, PW-1 says, the deceased left the house on 26.02.2018 at 2.00 pm. His body was found in a isolated field on the next day ie 27.02.2018 at about 9.00 am. No evidence placed before the Court to ascertain who saw the body first and when the police received the first information and from whom. PW-1 had deposed that the next day at 6.00 am she and her sister Thulasi(PW-3) went to police station and reported about the missing of Amalraj. Police came and enquired and went. Later somebody informed that the body of her husband is found in the field of Pichaimuthu at Kumaran Nagar, Poonchulai Pudur. She then again went to the police station to give the complaint. The evidence of PW-1 clearly indicates that the police was informed about the missing of Amalraj as early as 6.00 am and they have arrived to the house of the deceased. However the said information not registered a complaint. Only at 10.30 am, FIR regisered. The informant PW-1 had deposed in her cross that she gave complaint at 7.00 am and returned home at 8.00 am. On her complaint, the



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police came to her village and started the investigation even before 9.00 am.

Whereas the FIR shows information received only at 10.30 a.m, this contradiction creates doubt whether Ex.P-1 is the first information or the earlier information suppressed and Ex P-1 prepared subsequently with intention to cover the real accused or contains exaggerated account or concocted story as a result of deliberation and consultation.

23. When the evidence in the case of circumstantial evidence is appreciated the link between each of the circumstances, the Court used to examine carefully to answer the links are intact. Each one of the circumstances must be proved without any doubt. The conclusion must be logical and should lead, the accused 'must be the person guilty of the offence' and 'not may be the person guilty of the offence'.

24. Motive, last seen together, confession and recovery are some of the important links in a case of circumstantial evidence. Each link on its own has to be tested and be satisfied that the same is proved beyond doubt. Further, the links must be without break to form a chain. In the instant case, only from the confession statements of the accused persons the previous



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motive, conspiracy and the execution are unravelled. We find no worthy reliable evidence to corroborate this fact.

25.The admissibility of the confession is limited to discovery of facts. It further requires unimpeachable corroboration. Section 27 of the Evidence Act is relatable to the information pertaining to a fact discovered. This provision merely facilitates proof of a fact discovered in consequences of information received from a person in custody, accused of an offence. In this case, the recovery of blood stained clothes based on confession not confirmed to contain the blood of the deceased. The currency recovered from the accused persons not proved to have emanated from A-1 and paid to A-3 to A-5 for committing the crime. There is contradiction regarding the identity of the weapon used to commit the crime whether it was a knife used to slaughter goat (ஆடு அருக்கும் கத்தி) or soori knife.

26.The analysis of the evidence as discussed above, we find the deposition of PW-1 to PW-4 and PW-7, the carry improvement and embellishments. Contradictions and manipulations in plenty.



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27.In *Abdul Nassar -vs- State of Kerala*(2025 SCC OnLine111)

recently, the Hon'ble Apex Court has enunciated the principles that the Courts must adhere to while appreciating and evaluating evidence in cases based on circumstantial evidence, as follows:-

“(i). The testimony of each prosecution and defence witness must be meticulously discussed and analysed. Each witness's evidence should be assessed in its entirety to ensure no material aspect is overlooked.

(ii). Circumstantial evidence is evidence that relies on an inference to connect it to a conclusion of fact. Thus, the reasonable inferences that can be drawn from the testimony of each witness must be explicitly delineated.

(iii). Each of the links of incriminating circumstantial evidence should be meticulously examined so as to find out if each one of the circumstances is proved individually and whether collectively taken, they forge an unbroken chain consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

(iv). The judgment must comprehensively elucidate the rationale for accepting or rejecting specific pieces of evidence, demonstrating how the conclusion was logically derived from the evidence. It should explicitly articulate how each piece of evidence contributes to the overall narrative of guilt.

(v). The judgment must reflect that the finding of guilt,



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if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis.”

On applying the above principles, we find that, the testimony of PW-1 regarding the visit of A-1 to A-3 to take her husband with them for peace talk suffers contradiction with PW-3 testimony.

28.The last seen theory introduced through PW-2 and PW-4 bristles with contradiction. Absence of any evidence that the information of last seen passed on by PW-2 and PW-4, coupled with contradictions in the testimony of PW-1 makes reliability of her testimony doubtful.

29.Above all, the proximity of the last seen and the time of death also not established by prosecution, either through PW-1 and PW-2 and through PW-2 and PW-4 independently or collectively. While so, this Court is bound to apply the trite principle that the accused by acquittal gains double benefit and the same need not be disturbed just because an alternate view also is equally probable.



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30.As a result, these Criminal Appeals stand dismissed.

[G.J.,J] & [R.P., J]
25.03.2025

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

PJL

To

1.The Additional Sessions Judge/
Fast Track Mahila Court,
Karur.

2.The Inspector of Police,
Mayanoor Police Station,
Karur District.

3.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/Ns

**Predelivery Judgement made in
Crl.A(MD)Nos.294 of 2020 & 476 of 2021**

25.03.2025