



Crl.A(MD)Nos.405 of 2022 & 255 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2025

CORAM:

**THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

Crl.A(MD)Nos.405 of 2022 & 255 of 2024

1.Crl.A(MD)No.405 of 2022:

D.Raja,
S/o.Duraisamy,
Krishnan Kovil Street,
Lakshmi Puram,
Theni District. ... Appellant/P.W.2

Vs.

1.K.Vijayakannan,
S/o.Kubendran,
Krishnan Kovil Street,
Lakshmi Puram,
Theni District. ... 1st Respondent/Sole Accused

2.The Inspector of Police,
Veerapandi Police Station,
Veerapandi,
Theni District.
(Crime No.433 of 2015) ... 2nd Respondent/Complainant



Crl.A(MD)Nos.405 of 2022 & 255 of 2024

PRAYER:- Criminal Appeal is filed under Section 372 of Criminal Procedure Code, to call for the records relating to the Judgment passed in S.C.No.111 of 2016 dated 20.04.2022 on the file of the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court) Theni and to set aside the same and convict the accused.

For Appellant : Mr.G.Thiruvartselvan

For Respondents : Mr.K.A.Nandagopan (R1)

: Mr.T.Senthil Kumar (R2)
Additional Public Prosecutor

2.Crl.A(MD)No.255 of 2024:

State represented by,
The Inspector of Police,
Veerapandi Police Station,
Theni District.
(Crime No.433 of 2015)
State represented by
The Public Prosecutor,
Madurai Bench of Madras High Court

... Appellant/Complainant

Vs.

Vijayakannan,
S/o.Kubendran,
Krishnan Kovil Street,
Lakshmipuram,
Theni District.

... Respondent/Sole Accused



Crl.A(MD)Nos.405 of 2022 & 255 of 2024

PRAYER:- Criminal Appeal is filed under Section 378(1) of Criminal Procedure Code, to call for the records relating to the Judgment passed in S.C.No.111 of 2016 dated 20.04.2022 on the file of the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court) Theni and to set aside the same and convict the accused.

For Petitioner : Mr.G.Thiruvartuselvam

For Respondents : Mr.K.A.Nandagopan (R1)

: Mr.T.Senthil Kumar (R2)
Additional Public Prosecutor

COMMON JUDGMENT

(Judgment of the Court was delivered by G.K.ILANTHIRAIYAN, J.)

Both the appeals have been filed as against the order of acquittal passed in S.C.No.111 of 2016 on the file of the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court) Theni, dated 20.04.2022.

2.Criminal Appeal (MD)No.405 of 2022 has been filed by P.W.2, the father of the deceased and Criminal Appeal (MD)No. 255 of 2024 has been filed by the prosecution.



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3.The case of the prosecution is that the deceased and the accused were relatives. The deceased got married and, due to misunderstanding, got separated from her husband and was living separately. The accused, being the cousin brother of the deceased, fell in love with her and they were acquainted with each other for a period of one year. Thereafter, the deceased found that the accused was a drunkard and she refused to accept the marriage proposal between them. Hence, the accused developed animosity against the deceased and entered her house with the intention of committing rape.

4.On 05.08.2015 at about 01.50 p.m., he trespassed into the house of the deceased and committed rape. Thereafter, he killed her by throttling her neck with his hands. Further, in order to hide the occurrence, he cut the gas cylinder tube in the kitchen and set fire on the floor mat and white towel, as if it was a



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fire accident. He came out of the house, locked the door and threw the key inside the house through the window and fled away. At about 06.45 p.m., on the same day, the cousin brother of the deceased visited her house upon receiving information that there was a gas leak. The cousin brother and others broke open the door and entered into the house. They found the deceased dead on her bed with injuries on her body. Her cousin also found that the gas cylinder tube cut into two pieces and the floor mat and white towel partly burnt. Hence, the complaint.

5.Initially, F.I.R was registered in Crime No.433 of 2015 under Section 174 of Cr.P.C. Thereafter, it was altered into offences into under Sections 449, 376(1), 302 and 201 of I.P.C in S.C.No.111 of 2016.

6.On the side of the prosecution, P.W.1 to P.W.17 were examined and Ex.P.1 to Ex.P.22 were marked. Material objects



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M.O.1 to M.O.9 were also produced. On the side of the accused, no witness was examined and no exhibits were marked.

7.On perusal of the oral and documentary evidence, the trial Court found the accused not guilty of any offence and acquitted him of all the charges. Aggrieved by the same, P.W.2, the father of the deceased, and the prosecution have filed these Appeals.

8.The learned Additional Public Prosecutor raised the following grounds:

8.1.The aunt of the deceased was examined as P.W3 and she deposed that while she was speaking with P.W.6, P.W.7 and one Parvathy, she had seen the accused going inside the house of the deceased at about 01.30 p.m., and also seen him leaving the house of the deceased hurriedly after half an hour, that too by



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holding his shirt on his shoulder. However, the trial Court failed to consider her testimony merely on the ground that P.W.6 and P.W.7 turned hostile and did not corroborate the evidence of P.W.3.

8.2.He also relied upon the Judgment of the Hon'ble Supreme Court of India in the *State Vs. Sanjeev Nanda [(2012) 8 SCC 450]*, wherein it was held that if a witness becomes hostile to subvert the judicial process, the Court cannot remain as a mute spectator and every effort must be made to bring home the truth. The criminal justice system cannot be allowed to be defeated by witnesses who act under pressure, inducement or intimidation.

8.3.The extra-judicial confession statement of the accused clearly narrated the occurrence. It was corroborated by the medical evidence. Even then, the trial Court acquitted the accused. After collecting semen samples from the deceased, when the accused



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was subjected for medical examination, he refused to give semen sample to compare whether it is that of the accused. In fact, the accused is potent and capable of having physical relationship. Further, the deceased sustained abrasions on her nose, breast, lip, neck, elbow and hip, indicating that she was beaten and raped by the accused, who thereafter murdered her.

8.4.The motive for the accused to murder the deceased also proved through the testimonies of P.W.2, P.W.3 and P.W.8. They categorically deposed that the accused had offered to marry the deceased, but her family members refused. In fact, the deceased also break up their relationship. Therefore, the accused entered into the house of the deceased, committed rape, murdered her and created false circumstances to screen the offence by cutting the gas tube and setting fire. The confession statement also led to recover of the aruval which was used to cut the gas tube. Even then, the trial Court failed to convict the accused.



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9.The learned counsel appearing for the appellant in Crl.A(MD)No.405 of 2022 adopted the entire grounds raised by the learned Additional Public Prosecutor and further submitted that, though the accused was acquitted, the trial Court failed to grant interim compensation since the deceased was raped and murdered.

10.Heard the learned counsel appearing for the appellant, the learned counsel appearing for the first respondent and the learned Additional Public Prosecutor appearing for the State and perused the materials placed on record.

11.This is a case of circumstantial evidence. In order to prove the charges, the prosecution had examined P.W.1, who had first seen the deceased after the door was broken open. He is also the cousin brother of the deceased. He deposed that he received



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information as there was gas leakage smell comes from the deceased's house. Immediately, he along with other broke open the doors and entered into the house of the deceased and found the death of the deceased. They also found some injuries on the neck of the deceased. They also found a partly burnt floor mat and white towel which were marked as M.O.3. The gas tube was cut and two pieces of gas tube were produced as M.O.2.

12.While being so, at about 08.00 p.m., P.W.3 informed that she had seen the accused entering and leaving the deceased's house. However, P.W.1 did not even whisper the name of the accused in the complaint. Therefore, the F.I.R was registered under Section 174 of Cr.P.C. The father of the deceased was examined as P.W.2. He deposed that the accused's mother had offered the deceased to marry her son ie., accused. However, P.W.2 refused to accept the same. Thereafter, he arranged marriage for the deceased with one Karuppasamy. According to him, the accused raped and

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murdered her. Though P.W.2 knew about the relationship between the accused and the deceased, he did not even whisper about the accused as a suspect. P.W.1 also did not even whisper about the relationship between the accused and the deceased.

13.P.W.3, the aunt of the deceased, residing next to her house, deposed that she saw the accused entering and leaving the house and that he stayed for about half an hour. However, she did not even whisper about the said overt act of the accused to anyone on the date of occurrence. Further, the accused only had helped to remove the deceased's body, performed the first rites, and put up a shed in front of the deceased's house. Till then, P.W.3, who was present throughout, did not reveal any overt act of the accused, nor about any alleged love affair or marriage proposal. Although she deposed that while she was seeing the accused from entering into the house of the deceased, P.W.6 and P.W.7 were present and also one Parvathy. P.W.6 and P.W.7 turned hostile and the said



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Parvathy was not examined by the prosecution. Therefore, the testimony of P.W.3 was rightly rejected by the trial Court not only on the ground that P.W.6 and P.W.7 were turned hostile, but her testimony cannot be accepted at any angle for the reason that she was cooked up witness in order to strengthen the case of the prosecution.

14.P.W.1 categorically deposed that on the date of occurrence itself P.W.3 stated as if the accused entered into the house of the deceased and even then, the complaint did not disclose about the overt act of the accused. Therefore, the last seen theory was not proved by the prosecution in accordance with law. The further case of the prosecution was that the accused sustained some injury on his body, while committing rape on the deceased. However, this was not proved by the prosecution by any medical evidence. The accused was subjected for medical examination to check up his potency to have sexual intercourse. Though the



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accused is potent and capable to have sexual intercourse, he could not able to give his semen sample for comparison with the semen strain collected from the deceased body and her dress.

15.In the criminal case, adverse inference cannot be drawn, since the accused cannot be convicted on the presumption or assumption like civil cases. Therefore, the prosecution failed to prove any of the charges as against the accused. Further, it is also not believed that the accused, in order to screen the evidence, cut the gas tube and set fire on the floor mat. If at all the gas had actually been leaking and the door mat had been set on fire, definitely it caused huge burst. Even after noticing the gas smell around 06.00 p.m., there was no fire. When the accused set fire on the floor mat, it would have burnt everything. However, the prosecution marked the portion of the burnt mat and white towel. Therefore, it is also cooked up materials in order to strengthen the case of the prosecution. Further, the prosecution also seized dress



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of the accused and it was not found any blood strain and semen strain. If at all the accused committed rape and murder, definitely there would have been blood and semen stain on his undergarments.

16.Though the specific case of the prosecution was that the accused cut the gas tube and set fire, the prosecution failed to procure any fingerprints from the scene of crime to prove the charges. In order to strengthen the prosecution case, the confession statement was recorded from the accused on 07.08.2015. Even the confession statement did not support the case of the prosecution. Further, the prosecution witnesses categorically stated that the accused was taken into custody on 06.08.2015 itself and thereafter, the alleged extra-judicial confession statement was recorded by the Village Administrative Officer, who was examined as P.W.19, cannot be believable for the simple reason that after taking into custody of the accused, there is no question of extra judicial



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confession statement voluntarily before the Village Administrative Officer. Therefore, the prosecution completely failed to prove any of the charges as against the accused and the trial Court rightly acquitted the accused. Hence, we find no perversity in the findings of the trial Court and both the Criminal Appeals are liable to be dismissed. The appellant (P.W.2) is at liberty to make representation seeking compensation under Section 357 of Cr.P.C in accordance with law before the concerned authority.

17. Accordingly, these Criminal Appeals are dismissed.

**[G.K.I.J.,] & [R.P.J.,]
01.12.2025**

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

1. The Inspector of Police,
Veerapandi Police Station, Veerapandi, Theni District.

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

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G.K. ILANTHIRAIYAN, J.
AND
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