



Crl.A(MD)No.346 of 2020

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BAIL SLIP

Murugesan, Male, Aged about 37 years S/o. Maridhass (Appellant/ Accused No.1) Bail was granted vide court order dated 17/12/2020 and made in CRL MP(MD). No. 6322 of 2020 in CRL A(MD). No. 346 of 2020.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.03.2025

Pronounced on : 04.04.2025

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

Crl.A(MD)No.346 of 2020

Murugesan

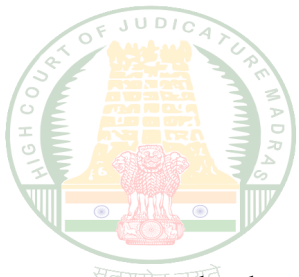
... Appellant/ Accused No.1

Vs.

The State rep. by

The Inspector of Police,

Karivalam Vanthanallur Police Station,



Crl.A(MD)No.346 of 2020

Tirunelveli District.

(in Cr.No.52 of 2015)

...Respondent/ Complainant

PRAYER : Criminal Appeal filed under Section 374 of the Criminal Procedure Code to call for the entire records connected to the Judgment in S.C.No.40 of 2018 on the file of the IV Additional District and Sessions Judge, Tirunelveli, dated 07.03.2020 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Alagumani

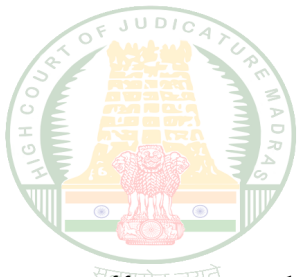
For Respondent : Mr.A.Thiruvadi Kumar,

Additional Public Prosecutor

JUDGMENT

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

This Criminal Appeal is filed against the conviction and sentence passed against the appellant/accused in the judgment dated 07.03.2020 passed by the IV Additional District and Sessions Judge, Tirunelveli, in S.C.No.40 of 2018 by convicting and sentencing the appellant for the offence punishable under Sections 364, 302 and 201 IPC and sentenced to undergo imprisonment for life and to pay a sum of Rs.5,000/- in default, to undergo two years simple imprisonment for the



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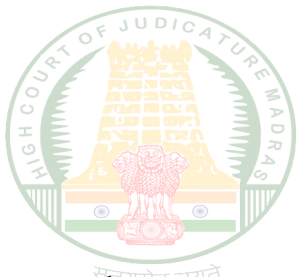
offence under Section 302 IPC and sentenced to undergo 10 years rigorous imprisonment and to pay a sum of Rs.5,000/- in default, to undergo two years simple imprisonment for the offence under Section 364 IPC and sentenced to undergo three years rigorous imprisonment and to pay a sum of Rs.5,000/- in default, to undergo one year simple imprisonment for the offence under Section 201 IPC.

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

(a) The complainant is the father of the deceased Muthukumar. The deceased Muthukumar had an affair with one Vigneshwari at Lalgudi, Trichy, married her and came to his place, living together. On the 18.02.2015 morning at 9'o clock, he went to Palakadu, Kerala for work, but he did not go to the said job, his cell phone No.99656 76640 was switched off from the morning 9'o clock. Hence, he lodged a complaint to trace out his son.

(b) The complaint-Ex.P.1 was received on 19.02.2015 at about 20.00 hours by P.W.23, Thiru.Subbaiah, Special Sub Inspector of Police had registered FIR in Crime No.52/2015 for "Man Missing". He had sent the original FIR to the Judicial Magistrate Court and a copy to the Inspector of Police for investigation.

(c) P.W.24 Thiru.Alagukannan, Inspector of Police received the FIR at



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about 21.00 hours went to the place of occurrence and prepared observation Mahazar Ex.P3 and rough sketch Ex.P16 in the presence of witnesses Ramadoss, Ganesan.

(d) He examined the witnesses Ramakrishnan, Ramadoss, Ganesan, Vanniyarajan, and Nagarathinam and recorded their statements.

(e) During investigation he came to know that the deceased Muthukumar had gone with Muthkumaran son of Ramar (A2) and Murugesan son of Mariyadoss (A1) on a two-wheeler and he searched in several places.

(f) On 20.02.2015 at about 5.00 a.m., he conducted search near Veeranapuram, Nitchopanathi River Bridge. He found a person hiding in a dark place who attempted to escape. Upon enquiry, he learnt that the person is A2 Muthukumaran. He arrested the said Muthukumaran in the presence of Yesudasan and Sakthivel at about 5'0 clock, recorded his confession statement Ex.P.17 and recovered two wheeler bearing registration No.TN 76 3016 - M.O.1 at about 7.15 p.m., in the presence of same witness under recovery mahazar Ex.P.18.

(g) On 20.02.2015, the dead body of the deceased Muthukumar was identified by A2 Muthukumaran at Sivakasi in the land belonging to Appanayakanpatti Pushparaj on the northern side of Vadakanmarainadu, in a Well on the Pirandai plant (Adamant Creeper). On 20.02.2015 at about 8.45 a.m., the



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Investigation Officer prepared observation mahazar Ex.P.6 and rough sketch Ex.P.19 in the presence of witness Paramasivam and Murugan, recovered light sandal colour pant, red and black colour towel – 2 numbers, visiting card – 6 numbers, VKC pride black colour chappal-1 number, BSNL sim card (M.O.1 to M.O.4 and M.O.6) under a recovery mahazar Ex.P.7.

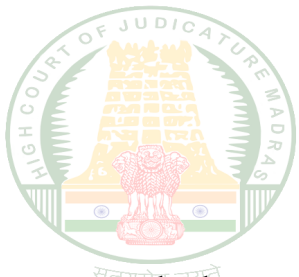
(h) He conducted inquest on the dead body between 10.45 hours and 12.15 hours in the presence of witnesses and Panchayadhars and prepared inquest report under Ex.P.20.

(i) Thereafter, to find out the real reason for the death, he sent the body with a requisition letter through Constable 31160, P.W.20 Thiru.Christopher Solomon, to the Government Hospital, for postmortem.

(j) He altered the section of the law under Section 364 and 302 IPC and sent alteration report-Ex.P.21 to the Judicial Magistrate Court.

(k) Thereafter, based on secret intimation, arrested A1 Murugesan near Pandhapuli Railway Gate on 22.02.2015 in the presence of Village Administrative Officer Thiru.Selvasekaran (P.W.22) and his Assistant Thiru. Muthuveerappan, recorded his confession statement Ex.P.13 and recovered stone (M.O.5) under a recovery mahazar as Ex.P.14.

(l) On 20.02.2015, he recovered the dresses worn by the deceased



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Muthukumar namely, light blue colour VPH gold trousers model trunk-M.O.7, banian-MO.8 coffee, blue, red, black colour full hand shirt -M.O.9, black colour waist rope (Carrigan rope) – M.O.10 under Form-91 and send the same to the Judicial Magistrate Court, Sankarankovil.

(m) P.W.15 Dr.Mariraj, conducted a postmortem on the dead body, and found the following injuries in Ex.P.9 postmortem report :

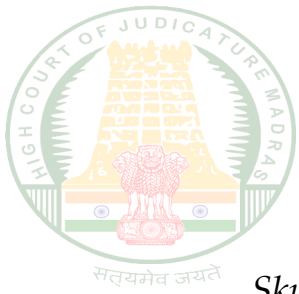
“The appearances found at the postmortem -

body lying on the back, well built, well nourished, symmetrical with black hairs and iris, without any rigour mortis in any limb. Face was found to be smashed over the nose and chin area with bleeding right upper 2 teeth, left upper 8 teeth, right lower 3 teeth, left lower 7 teeth injuries:

- 1. Nasal bone was fractured flat with bleeding*
- 2. fracture of the right maxilla bone 4x3 cms with fractured end depressed over the face,*
- 3. mandible fracture on the right side about 3cms from the centre*
- 4. Teeth on the right side upper and lower fractured*
- 5. 4cm breadth constriction mark over the upper neck measuring 16cms without any knot marks.*

Internal examinations Chest: no rib fracture. Lungs and heart congested. No blood clots. Hyoid intact.

Abdomen: stomach was congested empty with small and large bloated with gas. No hematoma. Liver, spleen, pancreas are all congested.



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Skull: linear fracture of the nasal with depressed edges, inside skull back with blood clot seen, Brain was partially liquefied and not lacerations and injuries."

and in final opinion Ex.P.10, he has opined that the *"The deceased would appear to have died of shock and haemorrhage caused by multiple injuries."*

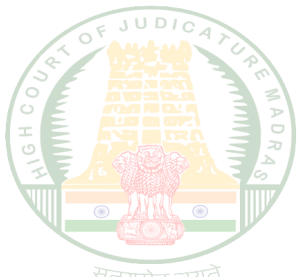
(n) On 16.04.2015, he sent the material objects under Form 95 to the Magistrate Court.

(o) On 29.09.2015, he sent a requisition to the RTO, Tenkasi to send about the details of the vehicle bearing Registration No.TN 76 3016, obtained information that the owner of the vehicle is one Syed Ibrahim s/o.Mohaideen Pitchai, of Tenkasi Taluk.

(p) He also examined other witnesses and recorded their statements. He received a judgment copy in C.C.No. 217 of 2006 dated 07.09.2009 under Ex.P.22.

(q) After completion of the investigation, on 13.10.2015 he filed a final report against A1 and A2 for the offence punishable under Sections 364, 328, 302 and 120(b) IPC.

3. On receipt of the records, the Judicial Magistrate, Sankarankovil took up the case in P.R.C.No.10 of 2016 and issued a summons to the accused. After the



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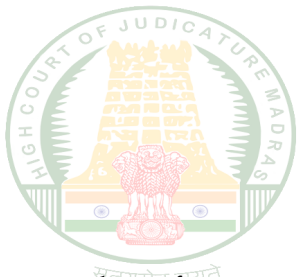
appearance of the accused, copies of the entire records were furnished to him free of cost under Section 207 Cr.P.C.

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, Tirunelveli, under Section 209(A) Cr.P.C. for further action.

5. The Principal District Judge, Tirunelveli received the case records, numbered it as S.C.No.40 of 2018 and made it over to the IV Additional District and Sessions Judge, Tirunelveli, for disposal according to law.

6. After receipt of the case records, the learned IV Additional District and Sessions Judge, Tirunelveli framed charges against the accused under Sections 364, 302 and 201 IPC. The charges were read over and explained to the accused. The accused denied the charges and claimed to be tried. Therefore, the case was posted for trial.

7. Out of the two accused, A2 died before framing of charges and



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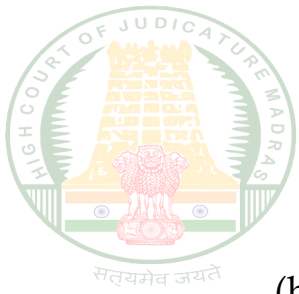
therefore, as against A2 case dismissed as abated on 17.04.2018.

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8. On the side of the prosecution, P.W.1 to P.W.24 were examined and Ex.P1 to Ex.P22 were marked. Material Objects M.O.1 to M.O.11 were produced. On the side of the accused, no witness was examined.

9. After a full trial, the trial Court convicted the appellant /A1 for the offence punishable under Sections Sections 364, 302 and 201 IPC and sentenced him to undergo imprisonment for life and to pay a sum of Rs.5,000/- in default, to undergo two years simple imprisonment for the offence under Section 302 IPC and sentenced to undergo 10 years rigorous imprisonment and to pay a sum of Rs. 5,000/- in default, to undergo two years simple imprisonment for the offence under Section 364 IPC and sentenced to undergo three years rigorous imprisonment and to pay a sum of Rs.5,000/- in default, to undergo one-year simple imprisonment for the offence under Section 201 IPC, against which, the present Criminal Appeal has been filed on the following among other grounds:-

(a) That the trial Court ought to have considered that the evidence of the PW22 (V.A.O) clearly stated that the stone used for the murder was recovered by the respondent police without blood stain in it and it have been marked as M.O.5.



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(b) That the learned trial judge ought to have considered that the deceased was missing on 18.02.2015 at about 09.00 P.M, but the defacto complainant gave the missing complaint on 19.02.2015 at about 08.00 P.M before the respondent police and FIR had been registered by the respondent police on the same date, but the delay for giving complaint was not explained by the defacto complainant.

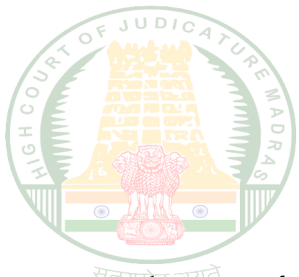
(c) That the learned trial judge ought to have considered that in the evidence of PW.24 Investigation Officer deposed that the mobile phone of the deceased was switched off on 19.02.2015, the details regarding all history were not verified and the deceased mobile phone was not recovered.

(d) That the learned trial judge ought to have considered that the evidence of P.W.1 and P.W.14 were not corroborating regarding the telephonic conversation.

(e) That the learned trial judge ought to have considered that the owner of the land where the body of the deceased was recovered was not examined.

(f) That the learned trial judge ought to have considered that the evidence of the P.W.24 (Investigation Officer) clearly explained the reason for the 2-month delay to produce the material object before the Judicial Magistrate was not explained.

(g) That the learned trial judge ought to have considered that in the



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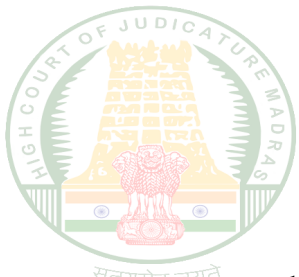
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evidence of P.W.24 (Investigation Officer) deposed that the sim card had been recovered and marked as M.0.6, but respondent police failed to verify the owner of the sim, phone number of the sim and call records was not verified.

(h) That the learned trial judge ought to have considered that the alleged occurrence happened at the TASMAR bar, a large number of persons were present at the place of occurrence, but no one of the independent witnesses was deposed before the trial court relating to the involvement of the appellant.

(i) The prosecution failed to explain the reason for the delay in registering the FIR and sent the FIR to the learned Judicial Magistrate and hence, the judgment of the trial Court is liable to be set aside.

9. The learned Additional Public Prosecutor appearing for the State argued that previously one of the accused Muthukumaran, since deceased (A2), attacked the deceased, a complaint was lodged by him, FIR was registered and the said accused was convicted for the offence in C.C.No.217 of 2016. Therefore, he had previous enmity against the deceased. A1 Murugesan, appellant herein who is the friend of said Muthukumaran (A2) conspired together and took him on a motorcycle and made him consume alcohol. After he became unconscious, the appellant strangled him, thereafter took a stone and attacked his face, inflicting serious



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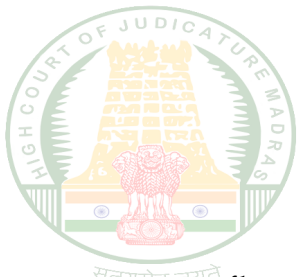
injuries and committed the offence. The motive for the crime was proved.
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Conspiracy between the accused were spoken by PW6 and PW7. The deceased was last seen in the company of the accused as observed by PW4 and PW5. They clearly stated that the accused and deceased consumed alcohol and had a fight, A1 attacked him with stone while A2 restrained him. Further, PW1, complainant deposed that he was informed by PW8 and PW9 that the deceased was last seen with the accused. Arrest confusion and recovery were proved. This Criminal Appeal has no merit and is liable to be dismissed.

10. Heard the learned counsel on either side and perused the materials available on record.

11. Now this court has to decide whether the judgement rendered by the trial Court is proper or liable to be set aside ?

12. According to the prosecution, due to previous enmity A1 had with victim, kidnapped him with the help of A2, made the deceased Muthukumar to consume alcohol. After he became unconscious, A2 held the deceased and A1 Murugesan, who is the appellant herein strangled him and attacked him with a



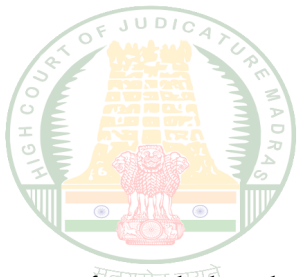
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stone, inflicting injuries that led to his death.

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13.The learned counsel for the appellant argued that the trial Court ought not to have considered the presence of PW4 and PW5 before and after the occurrence, which is highly doubtful. It is admitted that PW4 and PW5 were the relatives of the deceased, they were present at the time of the inquest, but did not say anything about that alleged occurrence to the Investigating Officer.

14. The prosecution relied upon the evidence of PW4 and PW5 as an eye witness to the occurrence. PW4 Thiru.Saravanan, deposed that he knew, the deceased and the accused. On 18.2.2016 he and Thangaraj (PW5) went to meet his uncle Murugan, a resident of Ammaiyarpatti. On their way near Appayya Nayakanpatyi, they saw the deceased Muthukumar along with the Accused, sitting under a tree and consuming alcohol. Upon enquiry, the deceased stated that he was going to Kerala for the job, he need to go to Sathur to pick up his sister's husband. In his presence, he could not consume alcohol and therefore drank with the accused. A bike was parked nearby, and it was stated that three of them had arrived on that bike. He and Thangaraj went to urinate and heard a noise. He saw three of them were fighting. He then went to his uncle's house and returned after two days. He



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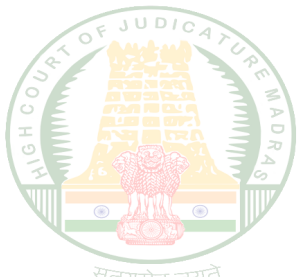
found the dead body of Muthukumar suspiciously.

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15. During cross-examination, he admitted that he could reach Ammayarpatti via a straight road. Appayanaikanpatti (place of occurrence) is situated beyond three villages which is not the nearest road to reach his destination, it is a much farther road. The witnesses decision to go via Appayanaikanpatti, instead of taking available road without providing any reason created suspicion He further stated that liquor bottles, plastic glasses, and snack pockets were found at the place of occurrence. But no such material was recovered by the Investigating Officer.

16. PW5 in his evidence stated that on the date of occurrence, the accused and the deceased had a fight, A2 Muthukumaran (since deceased) held the deceased Muthukumar while A1 Murugesan, attacked the deceased with a stone (MO.5). They then proceeded to their place and returned after two days. Upon noticing the Police examining witnesses near the well, he narrated the incident to the police officials.

17. Though the Investigating Officer cited PW4 and PW5 as an



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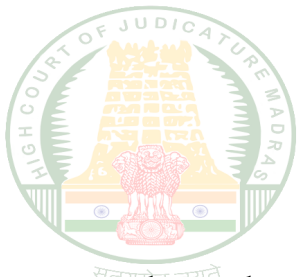
eyewitness to the occurrence, PW4 did not mention anything about the attack by A1.

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On the contrary, PW5 stated that A1 attacked the victim with M.O5 stone.

18. PW5 admitted in his cross examination that a complaint was lodged by PW1 regarding his son's disappearance. On the other hand, PW4 denied that nobody informed him about the same. If PW4 and PW5, witnessed the incident, they would not have remained silent but would have informed the same to the Police or PW1. Both their silence creates serious doubt about their presence at the place of occurrence.

19. P.W.24, the Investigating Officer prepared an inquest on 20.2.2015 between 10.45 and 12.15 p.m. In his cross-examination, he admitted that at the time inquest PW4 and PW5 were present but he did not mention their name in the inquest report, that the deceased was last seen alive by PW4 and PW5. If really, PW4 and PW5 had truly been present at the scene of occurrence and witnessed the occurrence, they would have informed the same to Investigating Officer about the fight and the attack by the accused which would be reflected in the inquest report. However, in column 4 of the above report, it was mentioned that the deceased was last seen alive by someone. No material was recovered from the place of occurrence



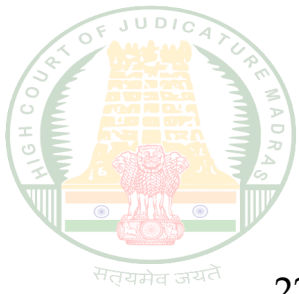
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to show that the deceased and the accused were consuming alcohol. Likewise, no alcohol content was found in the internal organs of the deceased. However, it is peculiar that despite knowing the deceased's life was in danger, the above witnesses neither attempted to provide details to the family members. The Evidence of PW4 and PW5 is not reliable, as their evidence was inconsistent with each other, lacked corroboration and appeared to be fabricated to support their relative and the prosecution case

20. PW6 and PW7 were deposed about the conspiracy between the accused. PW6 in his chief examination stated that one month before the occurrence both the accused conversed with each other that they wanted to assault the deceased. PW6 and PW7 are the neighbours of PW1. During cross-examination, they admitted that they knew that the deceased Muthukumar was missing but they had not revealed anything to the Police or PW1 about the conspiracy, soon after the disappearance of victim Muthukumar.

21. The counsel for the appellant argued that there was a delay in filing FIR and the delay was not properly explained.



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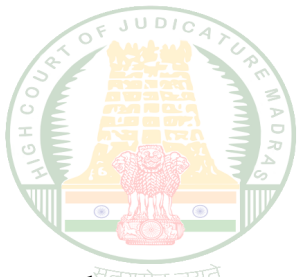
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22. The son of P.W.1 found missing on 18.2.2015 morning. The complaint Ex.P1 was lodged on the next day viz., 19.02.2015 at about 20.00 hours and received by the Judicial Magistrate Court on 20.02.2015 at about 1.00 p.m. There was delay in complaint and delay in forwarding the same to the Judicial Magistrate Court.

23. PW23, Thiru.Subbaiah, Sub Inspector of Police, who registered the FIR admitted that the distance between the Police Station and the Magistrate Court is 10 km. There is no plausible explanation by the prosecution for the inordinate delay.

24. PW1 in his chief examination deposed that PW2 Vanniaraja told him that A1 and A2 made the deceased Muthukumar, sit in the centre of their two-wheeler and travelled with him near Mathoni on 18.2.2015 at about 10 a.m. which was reiterated by PW3. However, PW2 Thiru.Vanniarajan and PW3 Thiru.Nagarathinam did not support PW1's version during trial, but turned hostile. The prosecution failed to prove that the deceased was kidnapped by the accused.

25. The accused were arrested and based on their confession, the vehicle



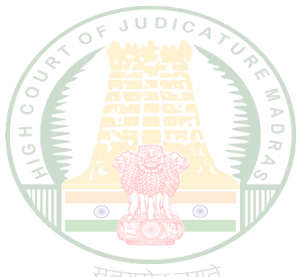
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bearing registration No.TN 76 3016 was recovered from A2 Muthukumaran (since deceased). However, the vehicle was not standing in the name of A2 Muthukumaran. It was standing in the name of one Syed Ibrahim. He was examined as PW17, he stated that he sold the vehicle on an exchange basis, but he is not aware to whom it was sold.

26. Further PW1 in his chief examination stated that he saw his son's dead body only with a brief/trunk. PW13 also corroborated the same. But the PW24 Investigating Officer, in his inquest report in column 7 mentioned that the dead body was found with light blue colour underwear, printed full hand shirt. PW20 Police Constable also confirmed that he received the above material from the dead body and handed over the same to the Police. The evidence of PW1 and the investigating officer is contrary, with regard to recovery of dresses from the dead body.

27. According to the prosecution, the motive for the offence was that A2 Muthukumaran attacked the deceased, leading to a case being filed by the deceased against him, resulting in his conviction. Therefore, A2 harboured enmity against the deceased. However, it was not established that A1/the present appellant had any



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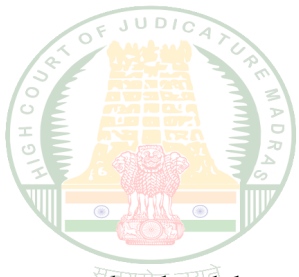
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motive or enmity against the deceased. It was stated that A1 was friend of A2 wanted to help him. A1 and A2 conspired together to kill the deceased. But the conspiracy between the accused is not proved by the prosecution.

28. On careful perusal of the entire records, this Court is of the view that there were lapses on the part of the Investigating Agency. The evidence deposed by the witnesses is not cogent and consistent but inconsistent and contradicts each other. The charges against the accused were not proven by the prosecution beyond all reasonable doubt. Therefore, the benefit of the doubt should be given to him and the judgment of the trial Court is liable to be set aside for the reasons aforementioned.

29. Therefore, we hold that the prosecution had not proved the charges, the appellant/ A1 is acquitted from the charges under Sections 302, 364 and 201 IPC.

30. Accordingly, the Criminal Appeal stands allowed and the judgment passed in S.C.No.40 of 2018 on the file of the IV Additional District and Sessions Judge, Tirunelveli, dated 07.03.2020 is hereby set aside. The appellant/ A1 is acquitted of all the charges. The appellant is directed to be set at liberty forthwith.



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The bail bonds executed, if any, shall stand cancelled. The fine amount, if any paid,
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shall be refunded to the appellant/ A1.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/04/2025

Sub Assistant Registrar
(CS- I, II, III, IV)

RM

To

- 1.The IV Additional District and Sessions Judge,
Tirunelveli.
- 2.The Inspector of Police,
Karivalam Vanthanallur Police Station,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4.The Section Officer,

20/21



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Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Copy To:

The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court, Madurai. (2 Copies)

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04.04.2025

VN (08/04/2025) 21P / 7C

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