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Crl.A(MD)No.474 of



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	11/11/2025
Date of Pronounced	28/11/2025

CORAM

**THE HONOURABLE MR JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MRS JUSTICE L.VICTORIA GOWRI**

Crl.A(MD)No.474 of 2022

Murugesan

Vs.

: Appellant/A1

State through the,
Inspector of Police,
Erwadi Dargah Police Station,
Ramanathapuram.

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of the Code of the Criminal Procedure, to call for the records in SC No.117 of 2018 on the file of the Principal District and Sessions Judge, Ramanathapuram, and to set aside the judgment, dated 16/02/2022 passed in SC No.117 of 2018 and consequently to acquit the appellant/A1.

For Appellant

: Mr.N.Ananthapadmanaban
Senior Counsel
for M/s.APN Law Associates

For Respondent

: Mr.B.Nambi Selvan
Additional Public Prosecutor



JUDGMENT

(Judgment of the Court was made by the Hon'ble **P.VELMURUGAN J.**)

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This criminal appeal is filed against the judgment of conviction and sentence passed by the learned Principal District and Sessions Judge, Ramanathapuram, in Special SC No.117 of 2018, dated 16/02/2022 and consequently to acquit the appellant/A1.

2.The case of the prosecution is that the de-facto complainant is the sister of the deceased Dharmar. She lodged a complaint stating that her younger brother Dharmar went to the Itampadal on 13.04.2011 at 04.00 pm, claiming that he went to Kalari, but did not return. When she contacted him on his phone number 9487337165, the same was switched off and that his relatives searched him, but could not find him. On the basis of the complaint given by the de-facto complainant, a case was registered under 'Man Missing'.

3.It is the further case of the prosecution that on 30/03/2016 at 10.30 am, one Pasupathi's son Murugesan from Panaiyadiyendhal appeared in person before the Village Administrative Officer Thiru.Muthusamy.



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Upon receiving information that the vehicle driven by Dharmar, who had gone missing, had been found near Uthirakosamangai, according to the secret plan of Dharmar's wife Pandiammal, who had gone missing Dharmar, along with her friend Murugesan, Melamadaï Ravi and two other friends, planned to kill Dharmar and make him disappear, in order to obstruct his illicit relationship with Dharmar's wife Pandiammal and to demand the return of the money received from Pandiammal to build a house and buy a Tractor. On 14/04/2011 at around 08.30 pm, on the road leading from Uthirakosamangai to Ithampadal, Dharmar was killed with a rope near the Appatha Uranie Vilaku road and Panaiyadiyenthal Murugesan, Melamadaï Ravi and two others have been found guilty of the murder and have been buried in the Periyakanmai, north of Periyailai Bus Stop, west of Theriruvēli. The Village Administrative Officer has recorded the statement that Ravi and others have broken Dharmar's motorcycle, a new blue colour TVS STAR CITY motorcycle without registration number, on the river path leading to Kalarikka, north of Panaiyadiyenthal, and have buried it separately. So, the FIR has been altered under Sections 120(B), 201 and 302 IPC.



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4. After completing the investigation, the respondent Police filed a charge sheet before the Judicial Magistrate No.2, Ramanathapuram against the accused persons for the offences punishable under Sections 342, 302, 201, 404, 120-B r/w 34 IPC and the same was taken on file as PRC No.1 of 2018. After completing the formalities, since the offences are triable exclusively by a Court of Session, the case was committed to the Principal District and Sessions Judge, and the same was taken on file as SC No.117 of 2018, for disposal.

5. After completing the formalities, since there were *prima facie* materials to frame charges against the accused, the learned Principal District and Sessions Judge, Ramanathapuram framed the charges for the offence punishable under Sections 120(B) IPC against A1 to A5; under Section 342 IPC against A1 to A4; under Section 302 IPC against A1 to A4; under Section 201 IPC against A1 to A4 and under Section 404 r/w 34 IPC as against A1 to A4.

6. In order to prove the charges against the accused, on the side of the prosecution, 37 witnesses were examined as PW1 to PW37 and 38 documents were marked as Exs.P1 to P38, besides marking 8 materials



objections as MO1 to MO8. The superimposition report and DNA report were marked as Court document Exs.C1 and C2.

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7. When the accused were questioned under Section 313 Cr.P.C in respect of the incriminating circumstances against them on evidence adduced by the prosecution, they denied the same as false. On the side of the defence, no oral or documentary evidence was adduced.

8. After completing the trial and upon hearing the arguments advanced on both sides and also considering the oral and documentary evidence, the learned Principal District and Sessions Judge, Ramanathapuram found that the prosecution has not proved the guilt of accused 2 to 5 and acquitted them from the charges levelled against them. But however, the trial Court found that the prosecution has proved the guilt of A1, convicted and sentenced him to undergo **Life Imprisonment** and imposed a fine of Rs.10,000/-, in default to undergo one year Simple Imprisonment for the offence under Section **302 IPC** and also sentenced him to undergo **3 years Rigorous Imprisonment** and imposed a fine of Rs. 2,000/-, in default to undergo 6 months Simple Imprisonment for the offence under Section **201 IPC** and both sentences were ordered to run concurrently.



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9.Challenging the judgment of conviction and sentence passed

by the trial Court, A1 as appellant has preferred this appeal.

10.The learned Senior Counsel for the appellant would submit that in this case, there is no eye witness to the occurrence and the entire case rests upon the circumstantial evidence; in the absence of major link in the chain of circumstance, the trial Court erred in convicting the appellant; the motive between the appellant and the deceased was not established; the case of the prosecution is that A1 to A4 intercepted the deceased while he was on his motor bike and used the rope to strangle the deceased and absolutely, there is no medical evidence to prove the strangulation; the participation of the appellant/A1 is highly doubtful; without examining the Forensic Expert relying on Exs.C1 and C2 by the trial Court for convicting the appellant/A1 is not legally sustainable; though Section 283 of Cr.P.C enables the trial Court to accept the documents tendered in evidence, particularly in the nature of findings and certificate issued by the Forensic Expert mentioned in the Section and in the case of this nature, Life Imprisonment is not safe to accept the contents of the document or mere production of the same without cross examining the Expert is not admissible and it is not valid. He would further submit that Ex.C1 is the



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DNA report wherein it is stated that humerus bone, tibia and hip bones were sent for forensic analysis; And it is also stated that blood samples were taken from Udaiyal i.e., the mother of the deceased; later during evidence, the trial Court recorded the fact that the mother of the deceased Dharmar expired and hence, her evidence could not be recorded in the Court; the prosecution has not established that the blood sample was actually taken from the mother of the deceased in order to show that the DNA fingerprint had matched with the deceased bones; even as per Ex.C1, it is mentioned in the report that the DNA fingerprint has to be analysed on the basis of the parental gene condensing in the gene of the person whose DNA is under test; DNA pattern is a combination of one portion of paternal and the other portion will be of maternal; unless both the maternal gene and paternal gene are collected and the same is tested and analysed and compared with that of the gene under question, it will nothing, but a mismatch or 50% match only and not 100%; The report of the DNA Expert is even after testing one gene from the mother the accuracy is 99% i.e., less than 50% that can be taken as 48% only; Therefore, scientifically, it is not safe to accept the DNA fingerprint test as scientific evidence; Since the Scientific Officer was not examined, the opportunity to cross examine the Expert was denied to the defence; The evidence of PW19 is unacceptable. PW19 roaming around



with the deceased on the whole day and both of them were consuming liquor, had lunch together, had taken rest together and in the course of the day, they met with other friends and those friends also brought liquor; all the friends consumed liquor and the deceased and PW19 travelled to Utharakosamangai by a two wheeler, there also the deceased purchased liquor and kept it in his bike and only after that, just before the death of the deceased, PW19 had left him without any support; The conduct of the witnesses is suspicious and the prosecution failed to conduct the fair investigation; The evidence of PW19 shows that he left the deceased to die alone on 14/04/2014 and again, brought to the picture only on 30/03/2016 when somebody was recovered from the soil. Therefore, it appears that PW19 is a stage-managed witness introduced to forge the chain of circumstances; The confession and recovery was not established and the confession is stated to be an extra-judicial confession given by the Village Administrative Officer as PW16 and the presence of PW37; There is no documentary evidence produced to prove the extra-judicial confession and the witnesses turned hostile and the recovery was also highly doubtful; The evidence of PW17-Tahsildar, who was present in the scene of exhumation at the body when the body was exhumed is not acceptable because of the fact that all the other parties such as the JCB, manual workers who



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participated in excavation, the Investigation Officer and various other persons were present in the scene of occurrence; When the Tahsildar reached the place of exhumation with DSP, he had no knowledge about how long the others were present in the place of exhumation prior to his arrival; The Tahsildar had no knowledge about who are the other persons that were assembled there; The Tahsildar stated that there were several persons and he did not know who the other persons were. So, the evidence of PW17-Tahsildar discloses the presence of several persons in the place of exhumation even before his arrival and particularly, when he did not know how long they were present prior to his arrival, absolutely, there is nothing to show that the place was known to the accused alone and only that portion of confession leading to recovery is admissible in evidence; Further, the Postmortem Doctor has stated that no flesh or body for conducting postmortem; In fact, he did not conduct postmortem at all, the services of the Doctor were made use of only to collect the humorous bone, tibia, hip bone; When deposing evidence, he has not stated about the presence of skull; In the absence of evidence regarding of collection, regarding skull, superimposition test appears to stage-managed under an afterthought, the major link between the offence and the accused missing and no link to connect the accused at all has been established; There is no evidence to



prove the fact that A1 had illicit affair with A5, who is the wife of the deceased, as a result which, he died and A1 came with A2 to A4 and based on the circumstantial evidence, the motive is vital to connect the accused with the offence and in the absence of evidence to establish the motive between the parties, absolutely there is no link between the offence and accused evidence and therefore, conviction rendered by the trial Court is perverse; In this case, there is no eye witness, but the trial Court based on presumptions and conjunctions, convicted the appellant/A1.

11.The learned Senior Counsel would further submit that though the case was registered against 5 persons, the trial Court acquitted the accused Nos.2 to 5 from the very same set of facts and evidence and A1 alone was convicted. Therefore, the conviction recorded by the trial Court against A1 is liable to be set aside. He would also submit that the State has not preferred any appeal against acquittal of the other accused persons namely A2 to A5. Therefore, under these circumstances, the judgment of the trial Court is perverse and the appeal is liable to be allowed.



12.Per contra, the learned Additional Public Prosecutor would submit that from the evidence of PW1 to PW4 and PW19, the trial Court has established the motive for murder; after the murder, the accused buried the deceased, hence, the deceased was missing and his sister made a complaint before the Police and his mother also filed HCP before the High Court and they could not find out the body, however, according to the evidence of PW1 to PW4, on the northern side of the Panaiyadiyenthal village, sand was taken in the river by using Poclain and at that time, it was found that a two wheeler was buried and the Poclain unearthed the two wheeler and later, the same was informed to the police; on hearing the same, A1 surrendered before the Police and he made a confession statement and based on his confession statement, he was taken to the place where he mentioned the place in the statement and in the presence of the Tahsildar, VAO, digging the body, at that time, bones were recovered, therefore, he intimated to the Doctor and he came to the spot and conducted postmortem and bones were collected and sent it to Forensic Lab for chemical examination in order to ascertain as to whether it belonged to the deceased and they took the DNA sample from his mother Udaiyal and sent it to the Forensic Lab and after test, they also received the report, which shows that both the DNA of the mother of the deceased namely Udaiyal and the



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deceased tallied with each other. Therefore, they confirmed that the bones unearthed were belonged to the deceased and thereafter, after investigation, filed the final report; From the evidence of PW1 to PW4 and PW19, the motive was established and also the evidence of PW1 to PW4, PW13 and PW14 would go to show that the bike was recovered; The evidence of PW12 and PW13 also proved the unearthed bones; The evidence of PW18 shows that they recovered the bike from the Police; From the evidence of PW19, motive and recovery have been established; From the evidence of PW20, bike which was taken from the river belongs to the deceased was established and he has also clearly spoken that the deceased only purchased said vehicle from their shop; PW22 also stated that prior to missing, he saw the deceased. PW23 is a mahazar witness, he also supported the case of the prosecution and PW28 has spoken that the deceased prior to his death, entered into an agreement for sale of his property and got Rs.1,00,000/- as advance; PW31 is the Doctor, who issued the Doctor Certificate. He has stated that he conducted test to find out the age of the bones and as per his evidence, the bones were belonged to a male. PW33 is the Doctor, who conducted postmortem on the bones exhumed from the place where A1 identified and also he collected the bones and sent it for chemical examination to the Forensic Lab and also collected samples from the



mother of the deceased and thereafter, after getting report, he gave a final opinion that the collected bones of the deceased were compared with that of the DNA sample of the deceased mother namely Udaiyal and both tallied with each other and therefore, the prosecution has established that recovered bones belonged to the deceased, who is the son of Udaiyal. PW32 is the Driver of the JCB and he has deposed that on the instructions of the Police, they came with Pochlin to the spot and at the request, he dug the place, where from 5 feet depth he found out the bones and there was a bike key and he unearthed and handed over the same to the Police in the presence of the Tahsildar and VAO. Therefore, though there is no eye witness to the occurrence, however, from the circumstantial evidence, the prosecution has proved its case beyond reasonable doubt that motive behind the murder, last seen theory and also recovery through the scientific evidence like DNA, Superimposition test and therefore, the trial Court has rightly appreciated the evidence, both oral and documentary and there is no merit in the appeal and the same is liable to be dismissed.

13. Heard both sides and perused the materials available on record.



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14.It is the specific case of the prosecution that the sister of the deceased Dharmar lodged a complaint stating that her younger brother Dharmar went to the Itambadal on 13.04.2011 at 04.00 pm, but did not return. When she contacted him on his phone number 9487337165, the same was switched off and that his relatives searched him, but could not find him. On the basis of the complaint given by the de-facto complainant, a case was registered under 'Man Missing'. In the meantime, on 30/03/2016 at 10.30 am, one Pasupathi's son Murugesan from Panaiyadiyendhal appeared in person before the Village Administrative Officer, Mr.Muthusamy. Upon receiving information that the vehicle driven by Dharmar, who had gone missing, had been found near Uthirakosamangai. According to the secret plan of Dharmar's wife Pandiammal, she along with her friends planned to kill Dharmar and make him disappear, in order to obstruct the illicit relationship with Dharmar's wife Pandiammal and to demand the return of the money received from Pandiammal to build a house and buy a Tractor. On 14/04/2011 at around 08.30 pm, on the road leading from Uthirakosamangai to Ithampadal, Dharmar was killed with a rope near the Appatha Uranie Vilaku road and Panaiyadiyenthall Murugesan, Melamadai Ravi and two others have been found guilty of murder and have been buried in the Periyakanmai, north of the Periyailai Bus Stop, west of Theriruvveli.



The Village Administrative Officer has recorded the statement that Murugesan, Melamadai Ravi and two others had broken Dharma's motorcycle, a new blue colour TVS STAR CITY motorcycle without registration number, on the river path leading to Kalarikka, north of Panaidiyendhal, and buried it separately.

15.It is a case of circumstantial evidence. A5 is the wife of the deceased Dharmar. From the evidence of PW2, it is seen that he is the brother-in-law of the deceased and the husband of PW3. He has stated in his evidence that A1 used to go to the house of the deceased and the deceased went to abroad, even at that time also, A1 used to go to the house of Dharmar and he had a illegal intimacy with A5, who is the wife of Dharmar. The same was also intimated to the deceased. The deceased came from abroad and when the same was questioned, at that time, A1 threatened the deceased.

16.From the evidence of PW1 to PW4 and also PW19, the previous motive between the deceased and A1 was established. The deceased was missing from 2011 and thereafter, no one was seeing the deceased. Therefore, the sister of the deceased gave a complaint to the



Police and the mother of the deceased also filed HCP before this Court.

Since he was not traceable, the Police were not able to produce him before this Court. Later, in the year 2006, while sand was excavating from the river nearby Panaiyadiyenthal village, at that time, the bike belongs to the deceased was unearthed and A1 subsequently, surrendered before the respondent Police and made a confession statement and based on that, he was brought to the place mentioned by A1, where in the presence of Tahsildar and VAO, by using JCB found the bones in the 5th feet depth and the same was recovered and produced before the Doctor for postmortem and sent it for Forensic Lab for chemical examination.

17.PW1 is the sister of the deceased. PW2 is the brother-in-law of the deceased. They have stated about the motive and also heard the news of the unearthed bike of the deceased. Thereafter, in the presence of Tahsildar and VAO, the bones were unearthed. Therefore, from the evidence of PW1 and PW2, motive has been proved. From the evidence of PW19 and PW27 the prosecution has proved that deceased was intended to sell his land and got advance of Rs.1,00,000/-. Regarding last seen theory, PW19 has clearly stated that on 14/04/2011, he left with money and some gold ornaments and on the next day, the sister of the deceased gave the



complaint for 'man missing'. PW27 also stated that one Kuilyambal approached him for purchasing the land owned by Dharmar and he got an advance of Rs.1,00,000/- and gave it to the deceased. When Kuilyambal was examined as PW28, she has also stated that the deceased entered into an agreement with her and she gave advance of Rs.1,00,000/- through PW27 to the deceased. PW18 is the Tahsildar, who has clearly spoken about the receipt of the two wheeler from the Police. From the evidence of PW20, it is seen that the two wheeler of the deceased was purchased from their company. PW14 is the Panchayat President, who deposed that on 27/03/2016 when they had gone to regulate the lake through poclain, at that time, they found a two wheeler i.e., Star City bike. From the evidence of PW17, the Tahsildar of Muthukulathur, on 30/03/2016, the Erwadi Police called him, he went there and A1 was present and at that time, the Police unearthed the sand through poclain, where the place identified by A1. At that time, they found bones and the respondent Police collected the same in the presence of Tahsildar and VAO. Therefore, from the evidence of PW17, PW1 to PW4, it is clear that the bones were unearthed from the river and thereafter, the bones were collected through the Doctor and the collected bones and the DNA sample collected from Udaiyal, who is the mother of the deceased.



18.Ex.C1 is the superimposition report and the opinion given by the Scientific Officer is that:-

OPINION:-

“The skull, item 4 could very well have belonged to the male individual seen in the photograph, item I.

Note: the photographs described a items 2 and 3 were found to be too hazy on enlargement hence they were not used for examination.

19.Ex.C2 is the DNA report and the opinion of the Scientific Officer is that:-

Conclusion: from the DNA typing results of the above samples, it is found;

(i)the femora (of ref 2) belong to a male individual.

(ii)the person to whom the femora (of ref 2) belong was the biological son of Mrs.Udaiyal.

Therefore, reading of Exs.C1 and C2, it is clear that the bones belongs to the deceased, who is the son of Udaiyal.



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20. Therefore, a combined reading of the evidence of PW1 to PW4, PW12, PW13, PW14, PW17, PW18, PW19, PW20, PW22, PW23, PW27, PW28, PW29, PW31, PW32, PW33 and Ex.P1-Complaint, P2-The admissible portion of the confession statement made by A2, Ex.P3-Admissible portion of the confession statement made by A3, Exs.P5, P6, P4, P19, P22, P23, P24 and Exs.C1 and C2, the prosecution has proved its case beyond reasonable doubt. The trial Court has also appreciated the oral and documentary evidence in a perspective manner.

21. Though the learned Senior Counsel appearing for the appellant vehemently contended that there is no evidence to show that Dharmar is the mother of the deceased Udaiyal and the samples taken from Udaiyal, a reading of the evidence of PW4, who is one of the sister of the deceased and daughter of Udaiyal, she has clearly stated that the deceased is her brother and Udaiyal is her mother. Though at the time of evidence, Udaiyal died, whereas PW4 has clearly stated that her mother Udaiyal died one year prior to the commencement of the trial. She has also stated about the missing of her brother and the complaint given before the Police and after exhuming the body, she was called by the Police and she also went there, and at that time, Tahsildar and VAO were present and in their presence,



they also took out the bones of the deceased. She has also clearly stated that the deceased is her younger brother and Uдайyal is her mother and since her mother Uдайyal is no more at the time of trial, the prosecution was not able to examine Uдайyal. This was also not denied by the defence. Subsequently, DNA test was conducted on the basis of the bones collected and the DNA samples collected from the mother of the deceased for test. Perusal of the superimposition report and DNA test report, it is seen that both DNAs matched with each other. Therefore, the prosecution has proved the motive, last seen theory and also recovery through oral and documentary evidence as well as scientific method.

22. Therefore, under these circumstances, this Court, while re-appreciating the evidence finds that the prosecution has proved its case beyond all reasonable doubt. This Court also inspire confidence of the above said oral and documentary evidence and found that the prosecution has proved its case beyond reasonable doubt.

23. In this case, though the trial Court extended the benefit of doubt against other accused and acquitted them from the charges levelled against them, since because the other accused were acquitted on the ground



benefit of doubt, it does not mean that the appellant is also entitled to get the same benefit of doubt. When there is a strong incriminating material evidence against the appellant namely motive, last seen theory and recovery, this Court does not find any perversity in the appreciation of the evidence by the trial Court. There is no merit in the appeal.

24.In the result, the criminal appeal is **dismissed**, confirming the impugned judgment passed by the trial Court.

(P.V.,J) (L.V.G.,J)
28/11/2025

Index:Yes/No
Internet:Yes/No

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To,

- 1.The Principal District and Sessions Judge,
Ramanathapuram
- 2.The Inspector of Police,
- 3.The Deputy Superintendent of Police,
Pattukottai Sub Division,
Thanjavur District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.A(MD)No.474 of

**P.VELMURUGAN,J.
and
L.VICTORIA GOWRI.,J
er**

**Pre-Delivery Judgment
made in
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