

Crl. A.(MD)Nos.70 and 119 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reserving the Order	Date of Pronouncing the Order
22.07.2025	29 .08.2025

CORAM

THE HONOURABLE Dr. JUSTICE R.N.MANJULA

Crl. A(MD)Nos.70 and 119 of 2018

Ayyappan ... Appellant in Crl.A(MD) No.70 of 2018

P.Arumugam ... Appellant in Crl.A(MD) No.119 of 2018

Vs.

The Inspector of Police,
Thadikombu Police Station,
Dindigul District.
(in Crime No.204 of 200

... Respondent/Complainant
(in both appeals)

Common Prayer : This Criminal Appeals are filed under Section 374(2) of the Code of Criminal Procedure, to call for the records from the trial Court and set aside the conviction and sentence passed in S.C.No.54 of 2012, dated 12.01.2018 on the file of the learned Additional District and Sessions Judge, Dindigul and acquit the appellants by allowing the appeals.

For Appellant : Mr.S.Mahendrapathy
in Crl.A(MD) No.70 of 2018

For Appellant : Mr.R.Gowri Shankar
in Crl.A(MD) No.119 of 2018

For Respondent : Mr.K.Gnanasekaran
Government Advocate (Criminal Side)



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COMMON JUDGMENT

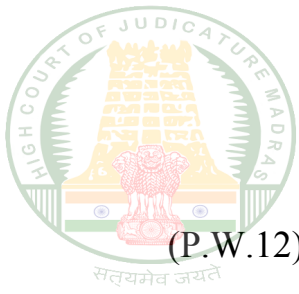
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These Criminal Appeals have been preferred challenging the judgment of the learned Additional District and Sessions Judge, Dindigul, made in S.C.No.54 of 2012, dated 12.01.2018.

2.The appellants are accused Nos.1 and 2. The first accused has been charged for the offences under Sections 364 and 302 IPC and the second accused has been charged for the offences under Sections 364 and 302 read with 34 IPC and convicted and sentenced by the learned Sessions Judge, as under:

Accused	Offence under Section	Punishment	Fine
First Accused	304(2) IPC	Rigorous Imprisonment for 7 years	Nil
Second Accused	304(2) IPC	Rigorous Imprisonment for 7 years	Nil

3.1.The case of the prosecution is that the deceased Navarathinam asked the first accused to help him in selling his land measuring 1½ acres, for which, first accused has entered into an agreement with one Thangam



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(P.W.12) for selling the land and obtained Rs.50,000/- as an advance. Even

after three months, the sale deed was not executed. The said Thangam (P.W.

12) had urged the first accused either to finish the sale transaction or to give back the advance amount given by him. But, the deceased was delaying. So the first and second accused entered into a conspiracy between themselves to kill the deceased and by way of executing the plan, on 26.04.2009 at about 10.00 a.m., they obstructed the deceased in an auto and took him to Ranganthapuram temple and on the way, the accused demanded the deceased either to give back the money or to execute the sale deed. As the deceased did not agree, the first accused kicked him back, pushed him and the deceased dashed on a rock. As the deceased was unconscious, the accused threw a heavy round stone on the neck of the deceased.

3.2.On 26.04.2019, the defacto complainant(P.W1), Village Administrative Officer while he was in his Office, was informed by the Village Assistant about a dead body lying on Chettinayagampatti Road. Immediately, P.W.1 rushed to the spot and found that a dead body was there. Thereafter, he went to the Police Station and gave the complaint.

3.3. A case has been registered in Crime No.204 of 2009 under



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Section 302 IPC on the file of the respondent police and the case was taken up for investigation. During the course of investigation, on seeing the newspaper report and the photographs, PW2 identified the dead body as her husband and she was enquired by the Police. After conclusion of the investigation, charge sheet has been filed against the accused for the offences punishable under Sections 364 and 302 read with 34 IPC.

3.4. After completing the legal mandate of furnishing copies and all other legal formalities, charges have been framed against the first accused for the offences under Sections 364 and 302 and the second accused for the offences under Sections 364 and 302 read with 34 IPC. When the accused were questioned, they denied their involvement and claimed to be tried.

3.5. Before the Trial Court, on the side of the prosecution, twenty three witnesses have been examined as P.W.1 to P.W.23 and twenty documents were marked as Ex.P1 to Ex.P20 and M.O.1 to M.O.10 were also marked. On the side of the accused, no oral and documentary evidence has been marked.

3.6. After the conclusion of trial, the learned Additional District and



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Sessions Judge, Dindigul, acquitted the accused from the charges under

Section 364 IPC and found both the accused guilty for the offence under

Section 304(2) IPC and convicted and sentenced them as mentioned *supra*.

Aggrieved over that, the appellants/accused have preferred these appeals.

4. The learned counsel for the appellants submitted that it is a case based on the circumstantial evidence and even according to the case of the prosecution, the motive is only between P.W.12 and the deceased. But P.W.12 has not been impleaded as an accused. He further submitted that P.W.2 had stated in her evidence that the first accused and the deceased were doing partnership business in iron scrap and on the assurance that her deceased husband would sell the ancestral property, the deceased had obtained Rs.50,000/- from the first accused. As the partition between the family could not be fructified, the property could not be sold by the deceased. At some point of time, the first accused made life threats to the deceased that if he failed to pay back the money, he would kill him.

5. According to the statement of P.W.2, on 26.04.2009, on getting a phone call from the first accused, her husband went out. P.W.2 further stated in her evidence that her husband called her at about 09.00 a.m. and said that



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the first and second accused have confined him and threatened that he should repay the money. After sometime P.W.2 tried calling back her husband, but the phone was switched off; and only on the next day, she got to see the news of death of her husband from the photographs in the newspaper and thereafter, she went to the Government Hospital, Dindigul, in order to identify the body.

6.By pointing out P.W.2's evidence, the learned counsel for the appellants submitted that there is a contradiction in the evidence of P.W.2 and the motive described by the prosecution. It is claimed that the accused have been falsely roped in the case and the trial Judge has not properly appreciated the same.

7.The learned Government Advocate appearing for the respondent submitted that P.W.2's evidence would show the involvement of the accused in the offences and the trial judge has rightly analysed the connecting links leading to the guilt of the accused in a proper perspective and rightly held that the accused are guilty for the offence under Section 304(2) IPC.

8.I gave my anxious consideration to the submissions made on either side and carefully perused the materials.



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9.The case is based on the circumstantial evidence, as the prosecution could not secure any eyewitnesses. The complaint has been given by P.W.1-Village Administrative Officer on hearing the information about an unidentified body lying within his jurisdiction of Settinayaganpatti Village. P.W.1 went to the place, where the body of the deceased was found, but he could not identify the person. Thereafter, he had lodged a complaint, Ex.P1 and the police started the investigation. One of the important witnesses is the wife of the deceased, who has been examined as P.W.2. She had last seen the accused on the morning of 26.04.2009. She had stated in her evidence that on 26.04.2009, her husband told that he was called upon by the first accused and she further stated that on 26.04.2009 at 09.00 a.m., the deceased called her and said that the accused threatened him by demanding money and he appeared to be nervous. When she called him back, his phone was switched off. The deceased did not come back and only on the next day, she came to know from the newspaper that her husband had died and thereafter, went to the mortuary in the Government Hospital, Dindigul and identified his body.

10.According to P.W.2, the first accused and the deceased were jointly doing iron scrap business and her husband had got Rs,50,000/- from the first accused, but he could not repay the money as agreed, since he could



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not sell his ancestral property, as the partition could not be effected between the family members. On 19.04.2009, an ear-piercing ceremony was conducted for their daughter, which was also attended by the accused. As gift money received from the function was also not sufficient to repay the amount of Rs.50,000/- availed from the first accused, the deceased and his wife requested for some more time.

11.The evidence of P.W.2 shows that the deceased was threatened by the accused 1 and 2 repeatedly by demanding money. In such circumstances, it is difficult to believe that the deceased went all alone on the call of the first accused. P.W.2 did not proceed to file any police complaint after she got a call from her husband saying that he was being threatened by the first accused.

12.P.W.2 did not inform any of the relatives that the deceased did not return home. She got to learn about the death of the deceased only from the newspapers. So the evidence of P.W.2 is relevant only with regard to the fact of last seeing the accused alone on 26.04.2009. The rest of the facts spoken by P.W.2 about the first accused were what she heard from the deceased husband through phone. The investigation agency has not recovered any phone call



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details in this regard. There is no material to show where the deceased was

taken. P.W.3, who is father-in-law of P.W.2, has stated that he was informed

only about the death of the deceased and asked to him to come to Dindigul

Government Hospital. P.W.4, brother of the deceased, has stated in his

evidence that the first accused was doing real estate business with the

deceased and the deceased had given the property documents to the first

accused for the purpose of obtaining a joint loan. While P.W.4 had stated that

the deceased had got advance in respect of the family property and spent the

same and he had not sold the property in view of the joint family issues, the

advance amount received by the accused remained with him.

13.P.W12 has stated in his evidence that the first accused asked him

to buy the property of the deceased and in pursuant to that he had entered into

the sale agreement with the deceased and he has given Rs.50,000/- as advance

to the deceased. The advance amount was given by P.W.12 and so his interest

is also involved, but P.W.12 has not been impleaded as an accused. So it is

difficult to believe whether the first accused has gone to the extent of

murdering the deceased for the sake of P.W.12. P.W.2 has stated that the first

accused has entered into an agreement with the deceased for the sale of the

ancestral property of the deceased. So the motive alleged to have been stated



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by P.W.2 is confusing. It is said that the deceased is liable to pay back the advance amount to P.W.12 and therefore, the accused could not have possibly executed the conspiracy after having met him. None of the other evidence is helpful to the case of the prosecution as various links of circumstances do not form a complete chain pointing towards the accused. Regarding the motive also, there is a strong contradiction between the evidence of P.W.2 and P.W.12. P.W.2 has stated in her evidence that her husband had entered into a sale agreement in respect of the ancestral property with the first accused. But P.W.12 stated in his evidence that the above said agreement has been written to safeguard his interest in getting the property from the deceased on sale.

14.P.W.13 has stated in his evidence that on 26.04.2009 at about 10.30 p.m. he was taking tea near Kattaspathiri. At that time, he saw the first accused arguing with the deceased and he interfered and sent the deceased with some other person in an auto and he could not identify that person. Thereafter, he did not see the deceased. As per the evidence of P.W.2, the deceased went in his bike saying that he was called by the first accused. P.W.13 is said to have seen the deceased along with first accused and he had sent the deceased in an auto. In the cross examination, P.W.13 has stated that when the police examined him, he has not stated that he had seen the first



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accused quarreling with the deceased. So the evidence of P.W.13 appears to

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15.P.W16 has stated that he stood as a witness for the confession given by the first accused, which led to the recovery of the motorcycle bearing Registration No. TN-58-AS-8246. The vehicle is said to have been parked outside of the wine shop. P.W22- Investigation Officer has stated that the said vehicle belonged to the deceased, but the wife of the deceased (P.W2) did not identify the vehicle during her examination. According to the evidence of P.W22, the vehicle was recovered from the wine shop opposite to a hospital.

16.In fact, P.W.13 has stated that he has seen the first accused and the deceased quarrelling at the same place. When the vehicle of the deceased remained in the same place, the deceased could have taken his vehicle itself to leave that place. Though P.W13 has stated that he had sent the deceased with one person by negotiation with the first accused, he did not identify whether the other person is the second accused. Except the lungi, which is said to have been recovered on the confession of the second accused, no other incriminating material is found in the evidence of the prosecution against the second accused. P.W13 has stated that he negotiated with the first accused



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and separated the deceased from him. In such case, the involvement of the first accused in the death of the deceased, is also doubtful.

17.P.W.20, Scientific Expert has stated in her evidence that there was a bloodstain in the lungi along with the other articles recovered from the place of occurrence and from the body of the deceased at the time of postmortem. P.W.23, Inspector of Police, has conducted the inquest and his Inquest Report is marked as Ex.P20. The Inquest Report also does not conclude who has caused the death of the deceased. In the Inquest Report Ex.P.20, it is simply stated that the deceased had died as an unidentified person threw a stone, crushing his face. P.W.15-Doctor, who has done the postmortem, has also stated that the deceased had died due to the head injury.

18.One more witness who was examined as P.W.6 has stated that while he was working in a lorry, on 26.04.2009 at about 09.15 a.m., the deceased called him and told that the first accused was quarrelling with him at Dindigul Bus Stand by demanding money. Even P.W.6 has not alerted the police and given any complaint after the phone call of the deceased was cut off. P.W.6 also tried calling the deceased, but could not reach him, as it was switched off.



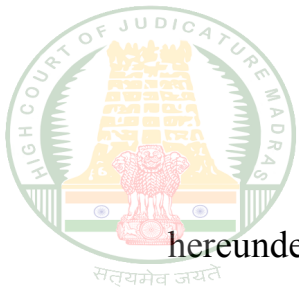
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19. Though P.W2 and P.W6 could not establish contact with the deceased, after they called him, they did not give any police complaint. The police did not secure the call details of the phones of the caller and receiver. The evidence of important witnesses P.W2 and P.W6 are contradictory and doubtful. In the absence of recovery of call details, while P.W.6 stated that the first accused quarrelled with the deceased at bus stand, P.W13 had stated that he had seen the first accused and deceased near Kattaspathiri and he negotiated with the first accused and rescued the deceased. His cross examination also would show that he did not state the said details to the police during examination. All these inadequacies and disconnection in the evidence of the prosecution, would only earn benefit of doubt in favour of the accused.

20. The links in the circumstantial evidence are not connecting with all the links to point out the accused. But the learned trial Judge did not appreciate the doubtful circumstances and disconnection between the links and proceeded to hold that the accused guilty.

21. In this regard, it is relevant to rely on the Judgment of the Hon'ble Supreme Court reported in (1984) 4 SCC 116, in the case of ***Sharad Birdhi Chand Sarda Vs State Of Maharashtra***. The relevant paragraph is extracted



hereunder:-

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152.A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in [Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra](#), where the following observations were made:

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say. they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency.

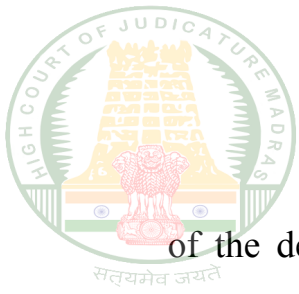
(4) they should exclude every possible hypothesis except the one to be proved, and



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

22.In the instant case, there is no clarity about the motive for which the deceased was killed. The various links in the chain of circumstances shown by the prosecution got disconnected at various levels. The circumstance as to the proximity to the time of the offence, is also not established. When PW2 has stated that she received the phone call from the deceased at about 09.00 a.m., on 26.04.2009, the other witness, P.W6, has stated that he also received a call from the deceased saying that he was caught up with the first accused at Dindigul bus stop, whereas P.W13 has stated that he had seen the first accused quarrelling with the deceased near Kattaspathiri and he interfered and negotiated with the first accused and separated the deceased and sent him with a person in an auto. The said person has not been identified by P.W13 as the second accused, who is present before the Court. If the deceased has been separated from the first accused, then the chain of circumstances breaks there. There is no other evidence available to show how the first accused got connected with the deceased close to the time of the death



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of the deceased. The Five Golden Principles enunciated from the case of

WEB COPY *Sharad Birdhi Chand Sarda Vs State Of Maharashtra*, as mentioned *supra*

have not been satisfied in the instant case. As it is not possible to infer an inevitable hypothesis about the guilt of the accused, the benefit of doubt has to be given in favour of the accused. The learned trial Judge did not appreciate the break of chain of circumstances properly before fixing the guilt against the accused.

23. Hence, this Criminal Appeals are allowed. The judgment of the learned Additional District and Sessions Judge, Dindigul, in S.C.No.54 of 2012 dated 12.01.2018, are set aside and the appellants are acquitted. The bail bond executed by the appellants, if any, shall stand terminated and the fine amount, if any, paid by the appellants shall be refunded to them.

29.08.2025

NCC : Yes/No

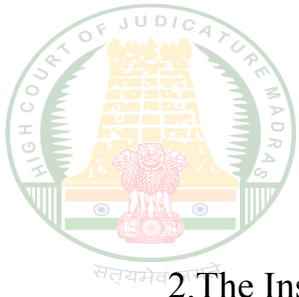
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To

1.The Additional District and Sessions Judge,
Dindigul.



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2.The Inspector of Police,
Thadikombu Police Station,
Dindigul District.

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



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Dr.R.N.MANJULA, J.

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COMMON JUDGMENT IN
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