



CRL A(MD)No.318 of 2021:

Bail Slip

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CRL A(MD)No.318 of 2021:

The Appellant viz, Pambaikannan @ M.P.Natesan, S/o. Pandi, Male, Aged 41 years, Sole Accused in S.C.No.41 of 2014 on the file of Additional District and Sessions Judge, Sivagangai, Sivagangai District was released on bail vide order of this court dated 23/08/2021 made in CRL MP(MD)No.5257 of 2021 in CRL A(MD)No.318 of 2021.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.03.2025

Pronounced on : 03.04.2025

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

Cr1.A(MD)No.318 of 2021

Pambaikannan @ M.P.Natesan

.. Appellant/Sole accused

Vs.

The State, rep by
The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai,
Sivagangai District.
(In Crime No.725 of 2012)

...Respondent/Complainant



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PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, against the judgment dated 07.10.2020 in S.C.No.41 of 2014 on the file of the Additional District and Sessions Judge, Sivagangai, Sivagangai District.

For Appellant : Mr.K.Subhalakshmi,
for Mr.S.T.Sasidharan Tamilkani

For Respondent :Mr.A.Thiruvadikumar
Additional Public Prosecutor

JUDGMENT

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

The Appellant is the sole accused in S.C.No.41 of 2014 on the file of the learned Additional District and Sessions Judge, Sivagangai. He was charged for offences under Sections 449 and 302 IPC.

2.To prove these two charges, the prosecution examined 11 witnesses. Marked 12 exhibits and two material objects. In defence, three witnesses DW-1 to DW-3 and seven exhibits, Ex D1 to ExD7 were marked and relied.



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3.The trial Court, after discussing the evidence and the submissions made by the respective counsels, held that the accused guilty of offence under section 449 of IPC sentenced to undergo two years Rigorous Imprisonment with fine of Rs.500/- in default, six months Rigorous Imprisonment and also guilty of offence under Section 302 IPC and sentenced him to undergo life imprisonment and fine of Rs.5000/- in default to undergo one year Rigorous Imprisonment. The period of sentence ordered to run concurrently and the imprisonment period already undergone was ordered to be set off.

The gist of the prosecution case:

4.In the Neduvasal village of Pudukkottai District, Vellaiyappan Swamy Temple, is managed by three branches known as Muthusamy Vagaiyara, Mandaiyan Vagaiyara and Alagar Vagaiyara. The accused belongs to Mandaiyan Vagaiyara. When the members of all the three lineages decided to conduct Kumbabhishekam (consecration) of the family deity, the accused refused to pay his contribution, so he was not called for the meeting held in connection with consecration. Hence, Vaithi (the deceased) who was the priest of the temple became inimical to the accused. On 27.06.2012 at about 6:40 PM, when PW-1 was at Madurai, the accused call him over phone and told that his uncle Vaithi will be done



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to death by that dawn of the day. More or less at the same time, the accused went to the house of Vaithi and picked quarrel with him. PW-3 and others intervened and sent back the accused. Thereafter, at about 9.00 PM, the accused trespassed into the house of the deceased, smothered the deceased and then to show to the world that he committed suicide by hanging, neck tied with a rope and hanged it to the ceiling of the thatched house.

The evidence placed through the prosecution witnesses:

5.Muniammal(P.W.3), the wife of P.W.1(de-facto complainant) saw the accused entering the house of the deceased at about 9.00 pm. PW-2, the mother of PW-1 saw the deceased at about 9.50 pm, in a weird position tied with rope on the neck. When PW-1 returned home, he came to know about this and rushed to the house of the deceased. He cut the rope and laid the dead body down. PW.1 set the law into motion by his complaint-Ex.P.1 registered as FIR at 22.15 hrs suspecting the accused. P.W.6 the Sub-Inspector of police registered the FIR under section 174 CrPC. The Sub-Inspector of Police, after registering the FIR had forwarded a copy of the FIR to the Judicial Magistrate. P.W.7 is the Grade-I, Police Constable, who took the body of Vaithi to the Sivagangai Hospital for postmortem, on the instruction given by P.W.8-the Sub-Inspector of Police. P.W.10 is the Investigating Officer, who



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conducted the initial investigation and prepared the rough sketch, observation mahazar. Conducted inquest, recorded the statements of witnesses and the accused was arrested on 29.06.2012 in the presence of P.W.5-Siva Subramaniam, Village Administrative Officer of that Village. The confession statement of the accused was recorded in his presence. Based on the information, the towel used for smothering Vaithi was recovered under Mahazar. P.W.11 is the subsequent Investigating Officer, who collected the postmortem report, recorded the statements of the postmortem Doctor-Mr. Kannan(PW-9) and the statement of the Scientific Officer, who gave the viscera report-Ex.P.7. After completion of the investigation, he had filed the final report.

Case of the accused:

6.In his defence, the accused himself mounted the witness box and been examined as D.W.1. In support of his case, DW-2 and DW-3 were examined. The accused had projected a theory that P.W.1 had ill will against the accused for trying to get a job in the TAMIN under compassionate ground. Therefore, when questioned P.W.1 about refusal to collect the contribution for the temple consecration, he conceived a design to fix him in the case of the suspicious death of Vaithi. P.W.1 through his wife-P.W.3 and his sister P.W.2 had manipulated the



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investigation by feeding false evidence. Exs.D.1 to D.7 are the correspondence and the Court order in connection with the request to provide appointment under compassionate ground. According to the evidence on the side of the accused, the said Vaithi, who had no cordial relationship with his wife and children, was living separately, Though his wife and daughter were living in the same village, they were not enquired by the police regarding the suspicious death of Vaithi.

Trial court finding:

7.The trial Court, relying upon the evidence of PW.1, PW.2 and PW.3 accepted the version of the prosecution and rejected the defence theory projected through D.W.1, D.W.2 and D.W.3 and the Ex.D1 to Ex.D7.

8.The recovery of towel M.O.2 based on the admissible portion of the confession taken as a circumstance against the accused as a proof of the guilt. The injuries found on the right forearm and left leg as sign of struggle while smothering. Since the deceased Vaithi was found in a squatting posture, legs stretched and hands on the knee the possibility of him committing suicide by hanging was



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eliminated. The previous enmity between the deceased and the accused in connection with the affairs of the family deity was projected as motive for killing. The evidence of P.W.3, taken as a proof for the last seen together. The evidence of P.W.1 regarding the threatening call received from the accused at 6.41 p.m., and the evidence of PW-2 about the early quarrel between the accused and the deceased at about 6.30 pm were considered to be incriminating the accused and sufficient to convict him for offences under sections 449 and 302 IPC.

9.The trial Court finding is challenged for the following grounds:-

"1.The judgment of the lower Court has to be set aside, since the occurrence happened on 27.06.2012 at 22.15 hrs and he same was reported to the respondent police on next day 28.06.2012 at 03.30 p.m., but the same was reached to the Judicial Magistrate Court only on 29.06.2012 at 11.30 a.m. The delay reporting the matter and reached the Court is fatal to the case of the prosecution. The delay alone not a fatal to the case of the prosecution, unless the prosecution witnesses came forward with explanation. Here is this case, the prosecution witnesses not given any explanation regarding the delay.

2.The judgment of the lower Court has to be set aside, since according to the prosecution, there was a dispute regarding the Collection of Fund in respect of Temple Kumbabishekam, for this aspect, no documents has been produced before the Court. Out of the motive, 27.06.2012 at 06.41 p.m, the accused using hemp rope would ties deceased neck to the stick projecting from



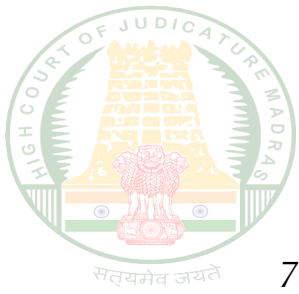
the ceiling of the hut and escape. To prove the case of the prosecution P.W1 to P.W.3 witnesses cited as an eye witness in this case. P.W.1 is an uncle of the deceased. OP.W.2 is the sister of P.W.1. P.W.3 is the wife of P.W.1. They are the close relatives and also chance witnesses in this case. P.W.1 is concerned, at the time of occurrence, he was working as a Driver at Damin Company and he gave a reason that because of the threat of the accused, he came to the spot. But earlier threat, he was not gave any complaint to the respondent police.

3.The judgment of the lower Court has to be set aside, since the FIR disclosed that 27.06.2012 there was a quarrel, after that, at about 10 p.m., P.W1 to P.W3 saw the deceased in a hanged position. But now the prosecution came forward with the story that P.W.3 saw the accused with torch light at 09.30 p.m., and entered into the deceased house. But that story was not mentioned in the FIR.

4.The judgment of the lower Court has to the set aside, since P.W.1 and P.W.2 are concerned, they are not seen the accused in the place of the occurrence. So as may as version to the connection of an accused to commission of the crime and evidence are contradictory with each other.

5.The judgment of the lower Court has to be set aside, since the prosecution party converted the case of suicide into murder case as against the accused.

6.The judgment of the lower Court has to be set aside, since the evidence adduced as circumstantial evidence, hence there is no direct evidence in this case. Based upon the circumstance evidence, this appellant was implicated in this case and further the trial Court also convicted the accused as same.



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7.The judgment of the lower Court has to be set aside, since the prosecution does not examined as a witness of the deceased wife and her family members with regards to the antecedents of the accused.

10.The case of the prosecution is based on the evidence of P.W.3, the witness, who claims to have seen the accused entering the house of the deceased and after some time her mother PW.2 came and informed her that the deceased found dead in his house. PW.3 had deposed that, on the fateful day, earlier at 6.30 pm there was fight between the accused and the deceased over conducting the temple festival. The accused left the place after challenging to kill the deceased by night. Soon she informed this to her husband (PW1) over phone. Thereafter, at about 9.00 pm, when there was power cut in the street, with the help of torch light, she saw the accused entering the house of the deceased. Again, she called her husband and informed about the visit of the accused to the deceased house. After some time, PW.2-the mother of PW.3 came crying and informed that Vaithi (the deceased) found hanging in his house. By the time her husband (PW-1) also reached home and they all went to the house of Vaithi. They saw Vaithi neck tied with a rope and the other end tied to the ceiling of the thatched house. PW.1 cut the rope and laid him on the floor.

11.PW-1 and PW-2 are brother and sister. The deceased Vaithi is their paternal



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uncle. PW-3 is the wife of PW-1 and she is also the daughter of PW-2. The accused is distantly related to these witnesses. P.W.2 is the first person to see Vaithi dead. On seeing Vaithi legs stretched and hand on his knee, neck tied with rope and the other end to the ceiling wooden reaper, she rushed to the house of PW.2 and informed PW.1 and PW.3.

12.Though the trial Court had observed that these three witnesses had withstood the grueling cross-examination and no inconsistency in their evidence, the following contradiction and omissions are seen:

(a) PW-3 had deposed that at about 6.30 pm there was fight between the deceased Vaithi and the accused. She along with one Karruppi intervened and stopped the fight. Before leaving the accused challenged that he will kill Vaithi within that day. Immediately she informed her husband (PW-1) about the first fight at 6.30 pm and life threat made by the accused. Her husband told her that he was also threatened by the accused over phone and then instructed her to be careful, he will come back home soon. PW.1 had deposed that at about 6.40 pm., the accused called him over phone and threatened to kill him and his uncle Vaithi. Immediately he called his wife and told her about the phone call he received from the accused and about his threat. He advised PW.3 to be careful. At that time, his wife PW.3 informed about the fight between the accused and the deceased at about 6.30 pm.

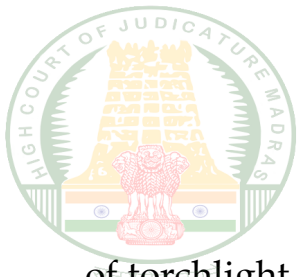


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Both PW-1 as well as PW-3 claim that they first called their spouse and informed about the threat made by the deceased. The Investigating Officer had failed to collect the call details to testify their contradictory claim. PW-2 had not said anything about the 6.30 occurrence. Further, Karruppi not examined to corroborate PW-3.

(b)PW.1, in the chief examination, had deposed that, after he reached the home and while changing his dress, his wife (PW-3) told him that, she saw the accused entering the house of the deceased. Whereas, PW-3 had deposed that soon after she saw the accused entering the house of the deceased, she called her husband again and informed him about the entry of the accused inside the house of the deceased. The trial Court has relied on the evidence of PW-3 as proof for the charge under section 449 IPC as well as the proof for last seen together. However, the trial Court has failed to consider the evidence of PW-3 is not corroborated by PW-1 but contradictory. If PW.3 had informed PW.1 over phone about the trespass of the accused into the house of the deceased at about 9.00 pm, then in the complaint, PW-1 would have certainly mentioned about it. Also, he would have deposed about the information he got from his wife at about 9.00 pm. PW-1 contrarily had deposed that, when he reached the home by 9.30 – 9.45 pm, there was power cut. While changing his dress, power got restored. At that time, PW-3 informed him that she saw the accused entering the house of the deceased and she saw that with the help



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of torchlight.

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(c) According to PW-1, the distance between his house and the house of the accused is about 15 feet. No electricity service in the house of the deceased. PW-3 had deposed that she does not know what light Vaithi used during the night. There was power cut in the street when she saw the accused entering the house of the deceased. She says that she saw him with the help of torch light. First of all, identifying a person at 15 feet away, with the help of torch light need to be appreciated with care and caution. Particularly, when PW.1 does not support the evidence of PW-3 in this regard and also the Sketch and observation mahazar indicates that PW.3 could not have seen the accused, as deposed in view of the obstructing structures between the house of PW-3 and the deceased as per the sketch Ex P-9 and Observation Mahazar Ex P-2. Ex.P.9-sketch prepared by PW.10 shows the house of the deceased is on the East of the thatched shed of Ramasamy(PW-1) and the house of Ramasamy is on the West of the thatched shed. The observation mahazar (Ex.P.2) shows that there is a thatched shed in between the house of the witnesses (PW-1 and PW-3) and the house of the deceased. Also few more obstructions like building materials collected for the nearby temple under construction. Therefore, when the evidence of PW-3 that she over phone reported to PW-1 immediately, after the visit of the accused to the house of the deceased, is not



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corroborated by PW.1. The contradiction between PW-1 and PW-3 makes the testimony of PW-3 that she saw the accused with the help of the torch light becomes highly doubtful. In this context, more than 5 hours delay in giving the complaint to the Police which is hardly 8 kms away and the delay of 32 hours in forwarding the copy of the FIR to the Judicial Magistrate gains relevancy.

(d) About the family of the deceased, PW.1 had deposed that the deceased and his wife were living separately in the same village. They got separated about 6 to 7 years. PW.2, also had deposed that the deceased and his wife are living separately for about 9 years, but living in the same village. Whereas, PW.3 contrary to the evidence of PW.1 and PW.2, had deposed that, the deceased was living with his wife and daughter in the same house. The unworthiness of PW-3 due to the contradiction not considered by the trial Court. Except PW-1 to PW-3, who are all related and interested witnesses, no independent witnesses in that village examined by the police to prove the enmity between the deceased and the accused regarding conducting the Kumbabishekam of the temple or the collection of fund. Regarding the confession of the accused leading to recovery, prosecution had relied on the evidence of Village Administrative Officer examined as PW5. This witness is not able to recollect, who reduced the confession into writing. He is not able to recollect at what time the confession was given by the accused. Towel which has nothing in



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unique and found in common at all places been shown as a material object used for smothering the deceased. Thus, the recovery of M.O.2 also not proved beyond doubt.

13. Being a case of circumstantial evidence, every circumstances must be proved and the link in the chain must be intact. In this case motive, the last seen alive together with the accused, recovery nothing is proved beyond doubt. None of the link which are necessary to complete the chain found proved. To fix the accused, in this case, prosecution had heavily relied on the evidence of PW.3. However, her deposition is contrary to the evidence of other witnesses PW.1 and PW.3 in respect of vital aspects including her testimony of seeing the accused near the house of the deceased which is about 15 feet away, with the help of torch light.

14. The suspected time of death is mentioned as 22:15 hours on 27 six 2012. FIR registered on 28.06.2012 at 3:30 a.m. The FIR copy had reached the Judicial Magistrate on 29.06.2012 at about 11:30 a.m. That is two days later. No proper explanation is given by the prosecution for this inordinate delay. The suspicion over the credibility of the information is strengthened in view of the inordinate delay.

15. Therefore, in view of the contradictions in the evidence of core witnesses PW-1 to PW-3, this Court holds that the prosecution has failed to prove the links in the circumstances of previous enmity as motive for the murder. It has also failed to



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prove the accused was seen near the house of the deceased at the relevant point of time. The delay in complaint and forwarding it to the Judicial Magistrate probablises the doubt about the truthfulness of the complaint. The non-examination of the family members of the deceased, though his wife and daughter were residing in the same village, but separately, all put together it is established by the defence that the link in the chain of circumstances not proved beyond doubt.

16. Therefore, the judgement of the trial Court is set aside. Accordingly the Criminal Appeal is allowed. The bail bond executed by the appellant/accused shall stand terminated. The fine amount, if any paid, to be refunded. The appellant/accused shall be released forthwith, if his confinement is not required in any other case.

Sd/-

Assistant Registrar(CS-II)

(*)Amended as per order of this Court dated 31/07/2025 made in CRL.A(MD)No.318 of 2021 .

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/04/2025

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



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To

(*)To be substituted to the order already despatched on 09/04/2025

- 1.The Additional District and Sessions Judge,
Sivagangai,
Sivagangai District.
- 2.The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai,
Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,Criminal Records Section,
Madurai Bench of Madras High Court,
Madurai.(2c)

Copy to:

- 1.The Judicial Magistrate No.I,Sivagangai
- 2.The Director General of Police,Mylapore,Chennai.
- 3.The Superintendent,Central Prison,Madurai.
- 4.(*)The District Collector,Sivagangai.



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+1 CC to M/s.S.T.SASIDHARAN TAMILKANI, Advocate (SR-47686[F] dated 31/07/2025)

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03.04.2025

MGJ(07.04.2025) 17P 12C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023

RA - (07.08.2025) 17P/ 11 C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.