



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 22.01.2026

Judgment Pronounced on : 09.02.2026

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

Crl.A.No.577 of 2019

Muthu

.. Appellant

Vs.

1. The State by
Inspector of Police
Karumalaikudal Police Station
Mettur Taluk
Salem District

2. Ezhumalai

3. Sumathi

.. Respondents

Criminal Appeal filed under Section 397 read with 401 of Cr.P.C., to set aside the acquittal order in S.C.No.118 of 2011 dated 02.03.2012 on the file of the Additional District Sessions Court (FTC No.1), Salem.

For Appellant	: Mr.A.Sundaravadhanam
For R1	: Mr.A.Damodaran Additional Public Prosecutor assisted by Ms.M.Arifa Thasneem
For R2	: M.G.Udaya Shankar
For R3	: Mr.R.Marudhachalamurthy



JUDGMENT

P.VELMURUGAN,J.

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This Criminal Appeal has been filed to set aside the judgment of acquittal passed in S.C.No.118 of 2011, dated 02.03.2012, on the file of the Additional District Sessions Court (FTC No.1), Salem.

2. The case of the prosecution is that the appellant herein is the father of the deceased. The deceased and the 3rd respondent/A2 are husband and wife and they had two children. The 2nd respondent/A1 is the friend of the deceased. The deceased and the 2nd respondent/A1 were working in a Factory called Alamelu Chemical Factory and became friends. In that way, while the 2nd respondent used to visit the house of the deceased, developed intimacy with the 3rd respondent/wife of the deceased. When the deceased came to know about the same, he warned his wife/3rd respondent and also informed to the Panchayathar/P.W.4, who in turn conducted Panchayat and warned the 2nd respondent not to repeat the same. Hence, the 3rd respondent left the matrimonial home along with the children and was staying in her parental house. Though the deceased asked the 3rd respondent/A2 to come and live with him, the 3rd respondent/A2 refused to come. Since the deceased was an obstacle to their illegal intimacy, both the accused/2nd and 3rd respondents hatched a plan on 09.10.2010 at 7 P.M. in the Mettur R.S. Bus Stop to kill the deceased and in order to carry out that plan, on 11.10.2010 at 11 p.m., in the land belongs to one Palaniappan, the 2nd respondent/A1 threw a large stone on the head of the deceased as a result, the deceased died due to the injuries. P.W.3 who

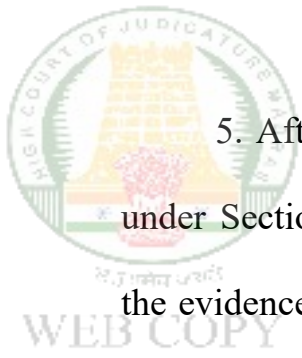
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passed through the occurrence place, found the body of the deceased and informed to the appellant who in turn rushed to the occurrence place and found the body of the deceased and lodged a complaint against the 2nd and 3rd respondents.

3. Based on the complaint lodged by the appellant, the respondent police registered the case in Crime No.227 of 2010 against the respondents 2 and 3/A1 and A2 for the offence under Section 302 of IPC and after completion of investigation, laid the charge sheet before the learned Judicial Magistrate No.2, Mettur, and the same was taken on file in P.R.C. No.9 of 2010. The learned Magistrate, after completion of formalities under Section 207 Cr.P.C., committed the case to the Principal District and Sessions Court, Salem since the offences are exclusively triable by the Court of Session and the same was taken on file in S.C.No.118 of 2011 and made over to the Additional District Sessions Court (FTC No.1), Salem, for disposal. After completing the formalities, since the learned Additional District Sessions Judge found prima facie case against the private respondents, framed the charges for the offence under Section 302 IPC as against the 2nd respondent/A1 and for the offence under Sections 302 read with 120(B) IPC as against the 3rd respondent/A2. After framing of charges, since the private respondents/accused 1 and 2 pleaded not guilty, summons were issued to the witnesses.

4. During trial, in order to substantiate the charges framed against the accused, on the side of the prosecution, totally as many as 17 witnesses were examined as P.W.1 to P.W.17 and 21 documents were marked as Exs.P.1 to P.21, besides, 17 material objects were exhibited as M.O.1 to M.O.17.



5. After examination of the prosecution witnesses, the accused were questioned under Section 313 Cr.P.C. with regard to incriminating circumstances culled out from the evidence of prosecution witness. The accused denied the same as false. On the side of defence, 3 witnesses were examined as D.W.1 to D.W.3 and 3 documents were marked as Ex.D.1 to Ex.D.3, besides 3 witness documents were marked as Exs.X.1 to X3.

6. After completion of trial and upon hearing of the arguments advanced on either side, the trial Court not found the guilt of the accused/private respondents for the charged offences and thereby, acquitted them by giving benefit of doubt stating that the prosecution failed to prove its case beyond all reasonable doubt.

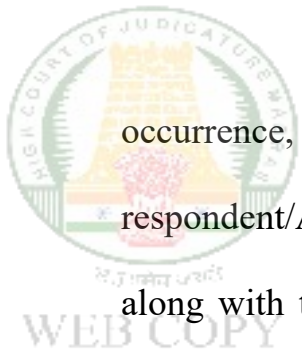
7. Aggrieved by the judgment of acquittal, the defacto complainant/father of the deceased has filed the present appeal. However, the prosecution has not filed any appeal challenging the judgment of acquittal.

8. The learned counsel for the appellant/defacto complainant would submit that the deceased and the 2nd respondent/A1 were working in Chemical Factory and became friends. The 2nd respondent/A1 used to visit the house of the deceased and during such time, the 2nd respondent/A1 developed illegal intimacy with the 3rd respondent/A2 who is the wife of the deceased. On coming to know about their relationship, the deceased warned them. Even thereafter, they were in illegal relationship. Hence, the same was informed to Panchayathar/ P.W.4 who in turn conducted Panchayat and warned the 2nd respondents not to repeat the same. Thereafter, one day, when the deceased was



returning from work, he saw the 2nd respondent leaving from his house. Hence, the deceased warned his wife/3rd respondent, due to which, the 3rd respondent left the matrimonial home with the children and was staying in her parental house. Since the deceased was an obstacle to their enjoyment, the private respondents/respondents 2 and 3, entered into a conspiracy to take away the life of the deceased and on the date of occurrence, the 2nd respondent/A1 took the deceased to consume alcohol and consuming alcohol, threw a big stone on his head due to which, the deceased sustained injuries and succumbed to the injuries. On the next day, the defacto complainant came to know about the dead body of the deceased lying in the scene of occurrence through P.W.3 and he rushed to the scene of occurrence and found the dead body of the deceased and thereafter lodged a complaint to the respondent police.

8.1 The learned counsel for the appellant further submitted that though there is no eyewitness to the occurrence, the prosecution clearly established the motive between the private respondents and the deceased. Earlier, the deceased had lodged a complaint before a middle man who is the Panchayathar/P.W.4 with regard to the illegal intimacy between his wife and friend/respondents 2 and 3. P.W.4 in his evidence has clearly stated that based on the complaint lodged by the deceased regarding the illegal intimacy between his wife and friend, he conducted Panchayath and warned the 2nd respondent/A1 and also advised him not to repeat the same. Further P.W.5, in his evidence has stated that on the date of occurrence, while he was returning from work at 9 p.m., 2, 3 persons were discussing in the place of occurrence. P.W.6 has deposed that on the date of

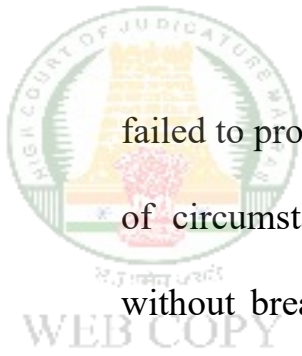


occurrence, while he was returning home, he heard the voice of the deceased and the 2nd respondent/A1. Even P.W.7 has clearly stated that one year before, he saw the deceased along with the 2nd respondent/A1 and one Ayyadurai in a wine shop and after buying Brandi, they left that place. Therefore, from the evidence of P.Ws.6, 7 and 8, the prosecution proved the last seen theory that the deceased was last seen with the 2nd respondent/A1.

8.2 The learned counsel for the appellant further submitted that even P.W.9 has clearly stated that one year before the date of giving evidence, he saw the 2nd and 3rd respondents/A1 and A2 talking together in R.S. Bus Stop. Subsequently, the deceased died and therefore, the conspiracy between the 2nd and 3rd respondents is proved and the motive for murder is also proved from the evidence of P.W.1 & P.W.4.

8.3 The learned counsel for the appellant further submitted that subsequent to the arrest of the 2nd respondent/A1, confession statement was recorded and recovery also effected. Though the chemical analysis result shows that the grouping of blood is inconclusive, however the report shows that the materials recovered from the 2nd respondent/A1 were found with human blood. The post-mortem report also clearly shows that the deceased died due to the injuries sustained in his head.

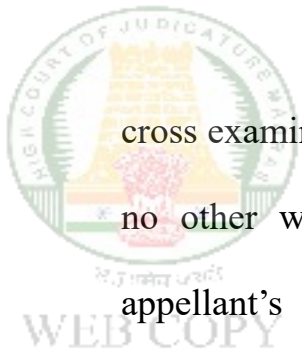
8.4 The learned counsel for the appellant further submitted that it is a case of circumstantial evidence. Though the prosecution proved the motive, last seen theory and recovery from the 2nd respondent based on the confession statement, the trial Court simply acquitted the private respondents/A1 and A2 giving reasons that the prosecution



failed to prove its case beyond all reasonable doubt. He further submitted that in the case of circumstantial evidence, if the prosecution proved the three cardinal principles, without break in chain, the Court has to consider the same and convict the accused, whereas, in this case, the trial Court failed to consider the materials produced by the prosecution and by adopting technical grounds, acquitted the accused. Hence, the present appeal has been filed by the father of the deceased. The wife of the deceased/3rd respondent had conspired with the 2nd respondent with whom she had illegal intimacy and murdered the deceased. Therefore, the judgment of acquittal passed by the trial Court is liable to be set aside and the private respondents are liable to be convicted with adequate sentence.

9. Though the State has not filed any appeal against the judgment of acquittal, the learned Additional Public Prosecutor appearing for the 1st respondent-Police submitted that the prosecution proved its case beyond all reasonable doubt. However, the trial Court failed to consider the proven fact and gave much importance to the defence evidence and acquitted the private respondents. Therefore, the judgment of the trial Court is liable to be set aside and the appeal has to be allowed.

10. Per contra, the respective learned counsel for the private respondents/accused 1 and 2 submitted that there is no eyewitness to this case and the prosecution has not proved the motive which is one of the main cardinal principles. Though P.W.4 was examined on the side of the prosecution to prove the Panchayath alleged to have been conducted by him between the appellant's family and the private respondents, during



cross examination, he has admitted that he was not a Panchayat President. Except P.W.4, no other witness was examined to prove that Panchayath was held between the appellant's family and the private respondents. Further, except P.W.1/father of the deceased, no other independent witness was examined to prove the illegal intimacy between the private respondents. Therefore, the motive which is the main cardinal principles in the circumstantial evidence, was not established by the prosecution.

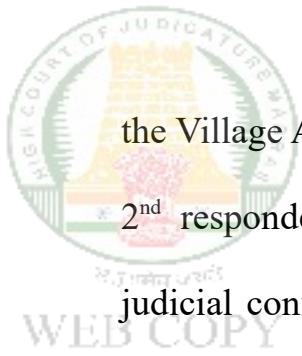
10.1 The learned counsel for the private respondents/accused 1 and 2 further submitted that even as per the last seen theory of the prosecution, A1/2nd respondent was seen with the deceased prior to the time of occurrence and after the occurrence, A1/2nd respondent was seen alone that too, away from the occurrence place. When the prosecution not proved that prior the occurrence the accused and the deceased were seen together and soon after the occurrence, the accused alone was seen separately within a proximate time and distance, it cannot be stated that the last seen theory is proved. Though the prosecution witness/P.W.5 has stated that some 2, 3 persons were talking together at the occurrence place on the date of occurrence, he has not stated who were they and that he has turned hostile. Even P.W.6 has only stated that he heard the voices of two persons and from their voice he recognized that it was the deceased and the 2nd respondent/A1 and he was not sure as to whether they are the deceased and the 2nd respondent/A1, as he had not seen the faces of those persons. Even P.W.7 has only stated that at about 9 p.m., he saw the deceased along with the 2nd respondent/A1 and one Ayyadurai in a wine shop and after buying Brandi, they left that place. Obviously, both



the deceased and the A1/ 2nd respondent are drunkards and since because they both were seen together in a wine shop, it cannot be stated that the 2nd respondent alone had taken the deceased to the occurrence place and committed the murder.

10.2 The learned counsel for the private respondents/accused 1 and 2 further submitted that even as per the confession statement of A1/2nd respondent, the deceased was accompanied by the A1/2nd respondent and also by one Ayyadurai and they consumed alcohol together. Thereafter, when the said Ayyadurai left that place, A1/2nd respondent attacked the deceased with stone and murdered him. However, the said Ayyadurai who lastly saw the deceased along with A1/2nd respondent was not examined by the prosecution and the non examination of Ayyadurai is fatal to the case of the prosecution. Even P.W.5 has deposed that on the date of occurrence, while he was returning from work at about 9.00 p.m., 2, 3 persons were discussing in the place of occurrence. However, the prosecution has failed to examine the third person.

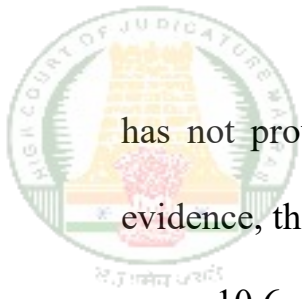
10.3 The learned counsel for the private respondents/accused 1 and 2 further submitted that on the side of the defence, three witnesses were examined as D.W.1 to D.W.3 and 3 documents were as Ex.D1 to Ex.D3. D.W.1 and D.W.2 are respectively the press reporters of Dina Thanthi and Dinakaran and as per the evidence of D.W.1 and D.W.2, the Superintendent of Police had given a press report on 12.10.2010 at about 6 p.m. that within 6 hours from the time of occurrence, the accused were arrested by the police and the news paper cuttings of the same were marked as Exs.D1 and D2, whereas, as per the evidence of P.W.2/Village Administrative Officer and Ex.P.5/Letter given by



the Village Administrative Officer to P.W.17/Inspector of Police, only on 13.10.2010, the 2nd respondent/A1 voluntarily surrendered before him and after recording his extra judicial confession statement, P.W.2 handed over A1 to the police at 2.30 p.m., which creates doubt over the case of the prosecution.

10.4 The learned counsel for the private respondents/accused 1 and 2 further submitted that already a case was pending against the deceased. The evidence of D.W.3/the Sub Inspector of Police, AWPS, Mettur, would show that on 27.12.2008, the 3rd respondent/A2 had lodged a complaint against her husband/deceased and mother-in-law for harassment and the C.S.R. receipt was marked as Ex.D.3. Ex.X.3 is the closure report of the said complaint, which would show that the deceased and his mother had agreed that the 3rd respondent shall stay in her mother's house till the deceased set right the water, bathroom and other facilities in his house.

10.5 The learned counsel for the private respondents/accused 1 and 2 further submitted that from the evidence of D.W.1 to D.W.3 and Exs.D1 to D3 and Exs.X1 to X3, the defence established that there is no iota of evidence to prove that the private respondents entered into a conspiracy and committed the offence of murder. The trial Court rightly appreciated both the oral and documentary evidence and acquitted the private respondents finding that the prosecution has not proved its case beyond reasonable doubt. Even in the Serological Report, it is clearly stated that grouping of blood is inconclusive from the materials recovered from accused. Since the prosecution

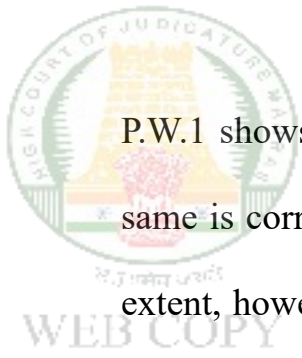


has not proved its case beyond all reasonable doubt from the oral and documentary evidence, the benefit of doubt was extended to the private respondents.

10.6 The learned counsel for the private respondents/accused 1 and 2 further submitted that it is settled proposition that when two views are possible, the view which is in favour of the accused has to be taken into consideration. Accordingly, the trial Court considered the same and acquitted the private respondents. In the case of circumstantial evidence, the prosecution has to prove that there is only one view that the offence was committed by the charged accused alone. If the other view is also possible, then the conviction cannot be recorded and the benefit of doubt always goes in favour of the accused. In the criminal jurisprudence the prosecution has to prove its case beyond all reasonable doubt. Unless in limited circumstances of a defence of alibi or under Section 106 of the Evidence Act, the burden of proving the guilt of the accused remains on the prosecution. Even in those circumstances, it is settled proposition that the foundational fact has to be proved by the prosecution. In this case, the prosecution has not proved its case beyond all reasonable doubt and there is no corroborative evidence. The evidence was not let in without any break in chain. In the cases of this nature, if any one of the chain is broken, the accused is entitled for acquittal. Therefore, there is no merit in this appeal and the same is liable to be dismissed.

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

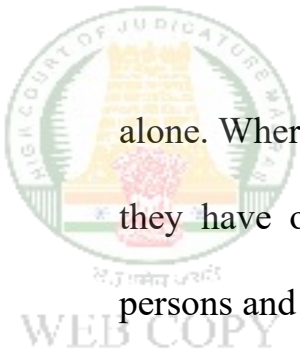
12. In this case, on the side of the prosecution, totally 17 witnesses were examined in which, the father of the deceased was examined as P.W.1. A reading of the evidence of



P.W.1 shows there was an illegal intimacy between the 2nd and 3rd respondents and the same is corroborated with the evidence of P.W.4. Though the motive is proved to some extent, however, in the cases of circumstantial evidence, the three cardinal principles of motive, last seen theory and recovery have to be established without a break in chain.

13. As far as the last seen theory is concerned, the prosecution examined P.Ws.5, 6 and P.W.7. A careful reading of evidence of P.W.5 shows that on the date of occurrence at about 9 p.m., while he was passing nearby the occurrence place, he heard 2, 3 persons were talking together, but he did not support the case of the prosecution and did not state that he saw the deceased along with the 2nd respondent at the scene of occurrence. Even P.W.6 has stated that in the occurrence place at about 11 p.m., he heard the voices of 2 persons. Though in the chief examination he has stated that from the voices he recognized that they were the deceased and the 2nd respondent, but he has admitted that he did not see the faces of those persons.

14. It is settled proposition that in the case of circumstantial evidence, the prosecution has to prove that immediately prior to the occurrence and within the proximate time, the deceased and the accused alone were seen together and further, the prosecution has to establish that soon after the occurrence and within the proximate time and distance, the accused alone was seen and if the prosecution establishes the same without any break in chain with the place of occurrence and the time of occurrence and the proximate distance, then it is for the accused to explain as to why he was there in the place of occurrence at that time with the deceased and subsequently, why he left him



alone. Whereas in this case, a careful reading of the evidence of P.Ws.5 and 6 shows that they have only stated that nearby the occurrence place, they heard voices of some persons and they both had not seen the faces of those persons.

15. P.W.7 has stated that at about 9 p.m., he saw the deceased along with one Ayyadurai and the 2nd respondent, in a wine shop. Even as per the confession statement made by 2nd respondent, on the date of occurrence, Ayyadurai, the deceased and the 2nd respondent had consumed alcohol and thereafter, Ayyadurai left and at that time, the 2nd respondent attacked the deceased. Unfortunately, in this case, the said Ayyadurai was not examined by the prosecution, which creates doubt in the case of the prosecution.

16. Even P.W.5 has clearly stated that he heard the voices of 2, 3 persons talking near the occurrence place. Therefore, it is clear that apart from the deceased and the 2nd respondent, yet another person was also present in the place of occurrence, however the prosecution failed to establish as to who the third person was, which also creates doubt in the mind of the Court.

17. Even the evidence of D.Ws.1 and 2 and Exs.D1 and D2 clearly show that a Superior Officer in the Police Department has made a press statement on 12.10.2010 that on 12.10.2010 itself, they arrested the private respondents/accused and the same has also been published in Dinathanthi and Dinakaran dated 13.10.2010, whereas, P.W.2 who is the Village Administrative Officer, has deposed that on 13.10.2010 at about 12 p.m. only, the 2nd respondent/A1 surrendered before him and voluntarily gave a statement and he recorded the same and thereafter produced him before the 1st respondent police at



02.30 p.m. If that be the case, how the Superior Officer gave such a press statement on 12.10.2010 itself, they arrested the accused, which also creates reasonable doubt.

Even as per Serology Report, the dress materials which were recovered from the 2nd respondent/A1 based on his confession statement and sent to the Forensic Lab, though it is stated that it is human blood, however, it has been stated that the result of grouping test is inconclusive.

18. Further, as against the 3rd respondent/A2, except the fact that there was an illegal intimacy between her and the 2nd respondent/A1, there is no material to show that there was a conspiracy between them. Evidence of D.W.3/Sub Inspector of Police, AWPS Mettur, clearly shows that the 3rd respondent/A2 had lodged a complaint before her against her husband/deceased and mother-in-law for harassing her and after enquiry, her husband/deceased and mother-in-law agreed that the 3rd respondent shall stay in her parental house until they set right the water, bathroom and other facilities. Therefore, this Court finds that the prosecution has not proved the motive beyond all reasonable doubt and there are reasonable doubt even in the motive, last seen theory and recovery. In the absence of either eyewitness or circumstantial evidence without break in chain, it is unsafe to record the findings that the private respondents/R2 and R3 only committed the charged offences. Therefore, there is no conclusive proof that the private respondents alone had committed the charged offences.

19. This Court as an appellate Court and final Court of fact finding, while re-appreciating the entire evidence, finds that the prosecution has not proved its case



beyond all reasonable doubt to come to the conclusion that there is only one view that

the private respondents/R2 and R3 only had committed the charged offences. Hence, this

Court finds no perversity in the findings of the trial Court. This Court finds no merits in

this appeal and the same is liable to be dismissed.

20. Accordingly, this Criminal Appeal is dismissed.

(P.V., J) (M.J.R., J)
09.02.2026

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To

1. The Additional District Session Court (FTC No.1),
Salem.
2. The Inspector of Police
Karumalaikudal Police Station
Mettur Taluk
Salem District
3. The Public Prosecutor,
High Court, Madras.

Copy to:
The Section Officer
V.R. Section



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Crl.A.No.57

P.VELMURUGAN, J



and

M.JOTHIRAMAN, J

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Crl.A.No.577 of 2019

09.02.2026