



Crl.A.No.93 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2026

Coram:

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

Crl.A.No.93 of 2019 and
Crl.M.P.No.2308 of 2019

Pavadai

Vs.

...Appellant

State represented by
The Inspector of Police,
Srimushnam Police Station,
Cuddalore District.
(Cr. No.81 of 2017)

...Respondent

Prayer: Criminal Appeal is filed under Section 374(2) Cr.P.C. to call for records in connection with S.C.No.8 of 2018 by the learned III Additional District and Sessions Judge, Cuddalore at Viruthachalam, dated 06.02.2019.

For Appellant : Mr.G.Pugazhenthii

For Respondent : Mr.A.Damodaran, Addl. Public Prosecutor
Assisted by Ms.M.Arifa Thasneem



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JUDGMENT

(Judgment of the Court was made by P.Velmurugan J.)

This criminal appeal has been filed to set aside the judgment of conviction and sentence passed against the appellant in S.C.No.8 of 2018 by the learned III Additional District and Sessions Judge, Cuddalore at Viruthachalam, dated 06.02.2019.

2 The case of the prosecution is that the deceased viz., Ganesan, was employed as a Forest Guard and the appellant/accused was employed as a Mason and both of them were friends for nearly 20 years. It is the further case of the prosecution that Ganesan was constructing a superstructure, for which, the appellant/accused has acted as a Supervisor and for which, the deceased had to pay the balance amount of Rs.2,000/- to the appellant/accused. On 14.04.2017, at about 5.45 p.m., the deceased Ganesan was informed by his superior to attend the forest fire at Kondasamuthiram. Therefore the deceased taking the assistance of the appellant/accused, who took the deceased in his two-wheeler [M.O.5], went to the place and on coming know that there was no fire, after informing the same to his superior,



while returning, on the way, they consumed alcohol. There was a wordy altercation as to the demand of the money by the appellant/accused and as the deceased refused, the appellant/accused got enraged by the same and decided to do away with the life of the deceased and also took a beer bottle and concealed it. On the same day, at about 8.45 p.m., the appellant/accused stopped his two-wheeler at the place of occurrence and pushed the deceased down and thereafter, repeatedly stabbed the deceased by using the beer bottle [M.O.2] and as a consequence, the deceased died.

3 The FIR was lodged by P.W.1-Village Administrative Officer, of Ramapuram Village, based on which, the investigation commenced, which resulted in filing of the Charge Sheet before the Judicial Magistrate II, Virudhachalam, which was taken on file in P.R.C.No.26 of 2017. Since the offence charged against the appellant is exclusively triable by the Court of Session, the case was committed to the learned Principal District and Sessions Judge, Cuddalore, who in turn, after assigning the number as S.C.No.08 of 2018, made over the same to the learned III Additional District and Sessions Judge, Cuddalore at Virudhachalam.



4 Before the trial Court, in order to prove the charges, prosecution examined 18 witnesses as P.Ws.1 to 18 and marked 17 documents as Exs.P1 to 17, besides five material objects M.Os.1 to 5. After examination of the prosecution witnesses and incriminating materials culled out from the evidence of prosecution witnesses were put before the accused and he denied the same as false. On the side the defence, no oral and documentary evidence was let in.

5 The learned Sessions Judge, after trial and after hearing the learned counsel on either side, by judgment dated 06.02.2019, found the appellant/accused guilty for the offence under Section 302 IPC and convicted and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for a further period of 3 months.

6 Aggrieved over the said judgment of conviction and sentence, the convict is before this Court with the present Criminal Appeal.



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7 The learned counsel for the appellant/accused would submit that since the entire case of the prosecution rests upon the circumstantial evidence, the burden lies heavily on them to connect all the links in the chain of circumstances, which unerringly point out the guilt on the part of the appellant/accused. Even as per the impugned judgment, the prosecution has failed to prove the motive.

7.1 It is the further submission of the learned counsel that as to the last seen theory, the prosecution had examined the sons of the deceased, viz., P.Ws.3 and 4 as well as the close relative of the deceased viz., P.W6 and except the fact that the deceased and the appellant/accused travelled together in a two-wheeler, nothing has been put forth to advance the case of the prosecution.

7.2 As far as motive is concerned, the motive as projected by the prosecutions is not corroborated with the evidence of P.Ws.3 and 4, who are the sons of the deceased. Further the evidence of P.W.6, who is none other than the maternal uncle of the deceased is totally contradicted with the



evidence of P.Ws.3 and 4 in all aspects.

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7.3 When the trial Court came to the conclusion that prosecution has failed to prove the motive as projected, it ought to have acquitted the appellant. Further admittedly the appellant and the deceased were friends for more than 20 years and it is not acceptable that for Rs.2,000/- the appellant had murdered the deceased.

7.4 It is not believable that the appellant voluntarily surrendered before P.W.8, who is the Village Administrative Officer and a stranger to the appellant and hence there itself the doubt starts in the case of the prosecution. Therefore the evidence of P.W.8 is not reliable and he could not have witnessed the confession alleged to have recorded from the appellant, which led to recovery of material objects.

7.5 The crucial witness i.e. wife of the deceased has not been examined by the prosecution in order to conceal the true facts. Therefore prosecution has failed to prove its case beyond all reasonable doubts, especially when it is solely based on the circumstantial evidence. Therefore



the appellant is entitled to benefits of doubt and hence the conviction recorded by the trial Court is liable to be set aside.

8 Per contra, learned Additional Public Prosecutor appearing for the State would submit that through the evidence of P.Ws.2, 3, 6 prosecution has proved the last seen theory and they all categorically deposed that the deceased on 14.04.2017, in the night hours, went along with the appellant. Coming to the other link of motive, the appellant/accused himself has given confession stating that he constructed a building for the appellant in his native and there was Rs.2,000/- due and when he asked the same, the deceased scolded the appellant in a filthy language and thereby the appellant enraged and decided to do away the deceased. Even though, the confession statement recorded by police is not admissible in evidence under Section 25 of the Indian Evidence Act, the portion of the confession, which led to recovery is admissible under Section 27 of the Indian Evidence Act.

8.1 Therefore from the evidence of P.W.8 the VAO and P.W.16 the Investigating Officer, prosecution has clearly proved the recovery of material objects. Hence through the testimonies of P.Ws.3, 4, 6, 8 and 10,



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had established all links connecting the appellant/accused with the commission of the crime and the Trial Court, on a proper appreciation of oral and documentary evidences, had rightly reached the conclusion to convict the accused and imposed the sentence as stated above and hence prays for dismissal of this appeal.

9 We have heard the rival submissions made on either side and also perused the materials placed including the impugned judgment.

10 It is the specific case of the prosecution that the appellant and the deceased were friends for more than 20 years. The deceased Ganesan was working as Forest Guard within the limits of Kattumannarkoil and the appellant is a Mason by occupation. The deceased was constructing a superstructure in his native, for which, the appellant/accused has acted as a Supervisor and for which, the deceased had to pay the balance amount of Rs.2,000/- to the appellant/accused. On 14.04.2017, at about 5.45 p.m., the deceased Ganesan was informed by his superior to attend the forest fire at Kondasamuthiram. Therefore the deceased taking the assistance of the appellant/accused, who took the deceased in his two-wheeler, went to the



place and on coming to know that there was no fire, after informing the same to his superior, while returning, on the way, they consumed alcohol. There was a wordy altercation as to the demand of the money by the appellant/accused and the deceased refused and scolded the appellant/accused and hence the appellant, being enraged by the same, decided to do away with the life of the deceased and also took a beer bottle and concealed it. On the same day, at about 8.45 p.m., the appellant/accused stopped his two-wheeler at the place of occurrence and pushed the deceased down and thereafter, repeatedly stabbed the deceased by using the beer bottle and as a consequence, the deceased died. P.W.7, on seeing the unidentified body, informed P.W.1, the Village Administrative Officer, who made complaint before P.W.13 and P.W.13 on receiving the information registered FIR in Cr.No.81 of 2017.

11 In order to substantiate the charges, prosecution examined 18 witnesses and marked 17 documents, besides 5 material objects. Admittedly the whole case rests upon the circumstantial evidence and hence it is the bounden duty of the prosecution to prove the cardinal principles of last seen theory, motive and recovery.



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12 In the present case, the Trial Court in the impugned judgment has recorded a finding that the motive for the commission of the offence has not been proved by the prosecution. It is to be noted at this juncture that in a case of circumstantial evidence, the motive plays a vital role and even the Trial Court has recorded a finding that the prosecution has failed to prove the motive.

13 Insofar as the last seen theory is concerned, the sons of the deceased were examined as P.Ws.3 and 4 as well as P.W.6, the close relative of the deceased was also examined. All the witnesses have spoken to about the fact that the appellant/accused took the deceased in his two-wheeler on 14.04.2014 during the night hours. The deceased sought help of the appellant/accused to take him to the spot where the forest fire emanated and the said fact has also been explained by the appellant/accused in his answer to one of the incriminating questions put to him under Section 313[1][b] Cr.P.C. as regards emanation of forest fire and P.W.10 the Forest Ranger has spoken to about the said fact. Therefore the witnesses have categorically deposed that they have lastly seen the deceased with the appellant and hence



prosecution has proved the last seen theory.

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14 Coming to the recovery of material objects, the appellant has appeared before P.W.8 the Village Administrative Officer and he gave extra judicial confession statement before P.W.8 and subsequently he was brought before the Investigating Officer and there also the appellant/accused had given confession statement in the presence of P.W.8 VAO and in both the statements, the appellant has clearly narrated the entire event. Based on the confession, the Investigating Officer P.W.16 recovered the material objects in the presence of P.W.8. Even though confession statement recorded by the police is not admissible in evidence and the same was hit by Section 25 of the Indian Evidence Act, however, the portion of the confession statement, which led to recovery/discovery of material objects are admissible in evidence under Section 27 of the Indian Evidence Act. The said admitted portion of the confession statement of the appellant/A1 has been marked as Ex.P5. Therefore prosecution has proved the recovery through Exs.P5, P16 and evidence of P.Ws.8 and 16.

15 Even though no witnesses has spoken about the motive,



however, it is the case of the prosecution that the deceased and the appellant on the date of occurrence had consumed alcohol and had wordy quarrel with regard to the pending due of Rs.2,000/-, occurred while the appellant was constructing the house of the deceased and the deceased scolded the appellant in a filthy language and the appellant being enraged, murdered the deceased.

16 The Doctor, who conducted postmortem on the body of the deceased was examined as P.W.15 and he issued postmortem certificate, which has been marked as Ex.P12, opining that the deceased would appear to have died due to effects of multiple cut injuries sustained. The injuries noted by P.W.15 in Ex.P12 are as follows.

1. Cut injury of size 2x0.5x0.5 cm seen over the outer aspect of left upper eyelid. Margins-irregular
2. Two punctured wound of size 2x0.5x0.5 cm & 2x0.5x1.5 cm one below the other seen over the left cheek.
3. Cut injury of size 6x1.5xoral cavity deep involving the left side of lower lip and tip of tongue, exposing fractured lower jaw at level of central and lateral incisor teeth with surrounding tissue contusion



17 Further the recovered materials from the body of the deceased and the cloths recovered from the appellant were sent for Forensic Science Laboratory, which has given reports that the blood found on the recovered material objects belong to group 'O' and the blood group of the deceased also 'O'. The appellant has not explained as to how the blood stain came to the cloths of the appellant.

18 A careful reading of oral and documentary evidence, this Court, as a final Court of fact finding, while re-appreciating the entire evidences, finds that prosecution has proved its case beyond all reasonable doubts and the trial Court has rightly appreciated the evidence and convicted the appellant. However, from the evidence of prosecution witnesses, it is an admitted fact that the deceased and the appellant were friends for more than 20 years and on the date of occurrence, they both consumed alcohol and they had heated wordy quarrel and at that time under the influence of the alcohol, the appellant, due to sudden provocation, attacked and murdered the deceased. Therefore the act of the appellant would not fall under Section 302 IPC and will come under Section 304(ii) IPC. Therefore we are inclined to



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modify the sentence of imprisonment to 10 years RI.

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19 Accordingly, the sentence awarded by the trial Court directing the appellant to undergo imprisonment for life is hereby modified to the effect that the appellant shall undergo rigorous imprisonment for a period of 10 years and fine amount and the default sentence awarded by the trial Court is confirmed.

20 With the above modifications, this Criminal Appeal is partly allowed. Consequently connected miscellaneous petition is closed. The trial Court is directed to secure the appellant/accused to undergo remaining period of imprisonment now modified by this Court, if any.

[PVJ] [MJRJ]
20.01.2026

Speaking Order/Non Speaking Order

Neutral Citation case: Yes/no

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To

1. III Additional District and Sessions Judge,
Cuddalore at Viruthachalam.
2. The Inspector of Police, Srimushnam Police Station,
Cuddalore District.

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3. The Public Prosecutor, High Court of Madras.

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