



CrI.A.No.704 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2026

CORAM

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

CrI.A.No.704 of 2019

Murugesan
S/o.Sundaram
No.82, M.V.K. Nagar, 5th Street,
Perambalur.

Appellant(s)/accused

Vs

State represented by
The Inspector of Police,
Puduchatram Police Station,
Namakkal District.
Crime No.1186 of 2010

Respondent(s)/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment dated 06.07.2019 passed in S.C.No.2 of 2016 on the file of the Principal Sessions Court, Namakkal and to set aside the same.



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For Appellant(s): Mr.S.V.Karthikeyan
For Respondent(s): Mr.A.Damodaran
Additional Public Prosecutor
assisted by Ms.Arifa Thasneem

JUDGMENT
(delivered by M.Jothiraman, J.)

Challenging the judgment dated 06.07.2019 passed in S.C.No.2 of 2016 on the file of the Principal Sessions Court, Namakkal, the appellant has preferred the above appeal.

2. The brief case of the prosecution is as follows:

2.1 PW1 – Sridharan, Village Administrative Officer, deposed that while he was in his office along with his Assistants Angamuthu, Varadappan and Ramakrishnan on 18.02.2010 around 6.00 a.m., the accused appeared before him and gave a statement stating that he has murdered his father Sundaram on 27.01.2010 between 9.00 p.m. and 10.00 p.m. in his house; the accused further confessed that his father Sundaram had sold his land for a sum of Rs.80,000/- and his father had given the entire amount to the elder son and when the accused demanded his part of the share, the deceased Sundaram rejected the same, on hearing which, the accused got angry and



murdered Sundaram by holding his head and slamming it on the wall and after that, the accused, using an axe, chopped Sundaram's body into two pieces, tied them in a sack, and buried them under the jackfruit tree near the bathroom; the next day, when the accused's mother and neighbours inquired about the whereabouts of Sundaram, the accused informed them that Sundaram had gone to Thirupathi and then to Perambalur; he (PW1) recorded the statement and read over the same to the accused and obtained his signature; the signature of the accused in the confession statement was marked as Ex.P1; he (PW1) also affixed the signature and the same was marked as Ex.P2 and the confession statement given by the accused was marked as Ex.P3; thereafter, he (PW1) took the accused along with the special report (Ex.P4) to the police station, where, the Inspector of Police registered the FIR (Ex.P6), in which, he (PW1) affixed the signature as complainant and his signature found in the complaint was marked as Ex.P5; the Inspector of Police (PW17) arrested the accused and on enquiry, the accused voluntarily gave confession statement in the presence of PW1 and his Assistants, which was signed by PW1 (signature marked as Ex.P8) and his Assistant one Angamuthu; the confession statement before the Inspector of Police was also signed by accused and his signature was marked as



Ex.P7; in pursuance of the confession statement, the accused took them to the scene of occurrence at Puduchatram, from where, the accused identified the place of murder and the place, where, the accused had chopped Sundaram's body; then, on 18.02.2010 around 7.00 a.m., PW17/Inspector of Police prepared the observation mahazar (Ex.P10) and drawn rough sketch (Ex.P29) in the presence of PW1; then, the accused produced the axe (M.O.1) and spade (M.O.2) from the bathroom of his house and the same were seized under the seizure mahazar (Ex.P12) and the same was signed by PW1 and the signature of PW1 in the seizure mahazar is Ex.P11; the accused also shown the place, where, he buried the body of Sundaram; the admissible portion of the confession statement of the accused before the Investigating Officer is Ex.P13; thereafter, all of them went to the police station; around 3.00 p.m., again they went to the scene of occurrence on the request of the Tahsildar; in the presence of Tahsildar, himself (PW1) and his Assistants, the accused identified the place, where, Sundaram's body was buried and then his (PW1's) assistants Varadhapan and Ramakrisnan dug the place and within one feet depth, they found a white color gunny bag and also a human body in decomposed state; PW17 prepared the observation mahazar (Ex.P15) and rough sketch (Ex.P30) in his (PW1's) presence.



2.2 PW2 – Ramayee, who is the mother of the accused, deposed

that she has two sons; her husband Sundaram was doing agricultural work when he was alive and her sons partitioned the properties owned by her husband and sold them.

2.3 PW6 – Murugan, deposed that just seven or eight years ago,

Sundaram was murdered by the accused; inquest over the body of Sundaram was done at the house of the accused.

2.4 PW7 – Perumal, deposed that he is doing laundry work near the

house of the parents of the accused; usually he comes to work at 7.00 a.m. and goes to home at 6.00 p.m.

2.5 PW14 – Dr.Rajmohan, deposed that while he was on duty on

18.02.2010, he received a requisition letter (Ex.P16) from the Inspector of Police, based on which, he went to the house of the accused situated in the main road Pudur Village along with a medical team, where, the Tahsildar and Inspector of Police were also present; a dead body, which was in decomposed state, in a gunny bag was taken from the pit measuring 2½ feet



depth; the body was found in a folded position, where, head and legs were found adjacent; since the body was in the decomposed stage, it was not possible to conduct postmortem; the bones of both left and right hands were broken, both side of the hip bones were broken, both the thigh and leg bones were broken; the skull of the body was preserved and sent for chemical analysis; the reason for the death could not be analysed, since the body was in the decomposed state; photographs were taken over the dead body in M.O.3 series; he opined that the bone fractures might have been caused when a person was cut by the axe (M.O.1); he issued postmortem certificate (Ex.P17).

2.6 PW15 – Kuppusamy, Tahsildar, deposed that on 18.02.2010, he had received a requisition letter (Ex.P18) from the Inspector of Police, pursuant to which, he went to the place of occurrence and also sent a letter to the District Collector with regard to conduct postmortem by exhuming the body from the pit; when he (PW15) reached the place of occurrence, PW1/VAO, Village assistants and police were there; he (PW15) examined Ramayee (PW2), Sennakesavan (PW3), Varuthammal (PW4) and Sarasu (PW5), wife, son and daughters of the deceased Sundaram, respectively and



recorded their statements; the statements of PW2, PW3, PW4 and PW5 were marked as Exs.P19, 20, 22 and 21, respectively; the police also brought the accused and enquired him as to where he had buried his father's body, for which, the accused identified the place, which is situated behind the bathroom of the accused and he has covered the area with the jackfruit tree leaves; he (PW15) sent the requisition letter (Ex.P16) to the Medical Officer attached to the Government Hospital, Namakkal, to conduct postmortem; the Assistants of PW1/VAO dug the pit and found a body in a decomposed state in a gunny bag and its legs and hands were cut; he conducted inquest over the body and prepared inquest report (Ex.P23); then, a team of doctors conducted postmortem in the place of occurrence itself in his presence; later, he (PW15) sent the statements of the witnesses and the inquest report (Ex.P23) to the Judicial Magistrate No.II, Namakkal; the report given by him (PW15) was marked as Ex.P28.

2.7 PW16- Moses, Head Constable, deposed that on 18.02.2010 at about 7.30 a.m. he had received the express FIR and complaint and submitted the same to the Judicial Magistrate No.II, Namakkal, at 10.00 a.m.



2.8 PW17- Anburaj, Inspector of Police deposed that on 18.02.2010

at about 7.00 a.m. while he was on duty, PW1 and Village Assistants brought the accused along with the confession statement of the accused (Ex.P3) and special report (Ex.P4), based on which, he registered an FIR in Crime No.123 of 2010 for the offences under Sections 302 and 201 IPC; then, he sent the complaint and FIR (Ex.P6) to the Judicial Magistrate No.II, Namakkal through PW16; he took up the case for investigation, arrested the accused at 8.00 a.m. and on enquiry the accused gave voluntary confession statement in the presence of PW1 and Village Assistants; the admissible portion of the confession statement of the accused was marked as Ex.P13; in pursuance of the confession statement, the accused took them to the place of occurrence, where, he prepared observation mahazar (Ex.P10) and drawn rough sketch (Ex.P29); then, he made arrangements to take photographs in the place of occurrence; later, the accused handed over the axe (M.O.1) and the same was seized under mahazar (Ex.P12); he sent the requisition letter (Ex.P18) to the Tahsildar, Namakkal to conduct postmortem by exhuming the body from the pit; thereafter, he took the accused to the police station; on the same day at 3.00 p.m., he took the accused to the place of occurrence, where, PW15/Tahsildar has enquired the accused; then, he prepared the



observation mahazar (Ex.P15) and drawn rough sketch (Ex.P30); PW15/Tahsildar conducted inquest over the body and completed his report at 4.00 p.m.; then PW14 conducted autopsy on the body; thereafter, he sent the accused into judicial custody and also sent the case properties to the Court under Form-91 (Ex.P31); then, he sent the skull and passport size photograph (Ex.P33) along with the requisition letter (Ex.P34) to the Judicial Magistrate Court for comparing the skull of the body for superimposition; after examination, he received the superimposition test report (Ex.P36) on 02.02.2011 and also obtained postmortem certificate (Ex.P17) from PW14; he examined the witnesses and recorded their statements.

2.9 After completing the investigation and based on the evidence collected, the Investigating Officer (PW17) filed a final report in P.R.C.No.08 of 2015 before the Judicial Magistrate No.II, Namakkal, against the accused for the offences under Sections 302 and 201 r/w 302 IPC.



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2.10 On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.2 of 2016 and was made over to the Principal Sessions Court, Namakkal, for trial.

2.11 The trial Court framed the charges under Sections 302 and 201 r/w 302 IPC against the accused herein. When questioned, the accused pleaded 'not guilty'.

2.12 To prove the guilt of the accused, the prosecution examined seventeen witnesses and marked thirty seven exhibits and three material objects.

2.13 After completion of prosecution side evidence, when the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same by stating that he has not committed the crime and he has been falsely implicated in this case. No witness was examined on the side of the accused nor any document marked.



2.14 After considering the oral and documentary evidence and upon hearing either side, the trial Court, by judgment dated 06.07.2019 in S.C.No.2 of 2016, has convicted and sentenced the accused as under:

<i>Provision under which convicted</i>	<i>Sentence</i>
Section 302 IPC	Life imprisonment and fine of Rs.5,000/-, in default to undergo three years and six months simple imprisonment.
Section 201 IPC	Three years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo nine months simple imprisonment.
The aforesaid sentences were ordered to run concurrently.	

2.15 Aggrieved over the same, the accused has preferred the above appeal.

3. The learned counsel appearing for the appellant/accused would submit that the prosecution miserably failed to prove the circumstances of the case *i.e.* motive, last seen theory, recovery and medical evidence. Further, the Court below failed to consider the fact that the case of the prosecution that the accused surrendered before PW1 and made voluntary confession, based on which, the crime came to the light, was not supported



by any of the witnesses. It is also to be seen that when the accused surrendered before PW1 and gave confession statement in the presence of the Village Assistants *viz.* Angamuthu, Varadappan and Ramakrishnan, who were cited as LW2 to LW4 in the final report, but, they were not examined as witnesses for the reasons best known to the prosecution, which is fatal to the case of the prosecution. Further, the evidence of PW1 is not reliable for the reason that even according to PW1, he permanently resides in Namakkal and would travel from Namakkal to Puduchatram to attend his office and his office working hours is 10.00 a.m. to 5.00 p.m., whereas, the surrender of the accused and voluntary confession was at 6.00 a.m. on 18.02.2010 as per his deposition. There is no explanation as to why PW1 was in his office at 6.00 a.m. on 18.02.2010, which is an extraordinary situation.

4. The learned counsel appearing for the appellant/accused would further submit that the prosecution has not examined any witnesses to prove the motive and last seen theory. The entire prosecution case has been projected only relying upon the evidence of PW1, Village Administrative Officer and PW17, Investigating Officer and all other witnesses, who were crucial to the case, were treated as hostile by the prosecution. Further, the



prosecution has failed to prove the presence or involvement of the accused nor his company with Sundaram immediately prior to the occurrence.

Therefore, the reasons given by the Court below for convicting the accused is untenable and unsustainable and hence, the judgement of the Court below is liable to be set aside.

5. *Per contra*, the learned Additional Public Prosecutor appearing for the respondent would submit that the evidence of PW1/VAO is fully corroborated to the evidence of PW17, Investigating Officer, with regard to the surrender and confession of the accused before PW1. Pursuance to the surrender of the accused, PW1 produced the accused before PW17, in turn, PW17 arrested the accused and on enquiry, the accused voluntarily gave confession statement and the same has been recorded in the presence of PW1 and in pursuance of the confession statement of the accused before PW17, the material objects were seized. He would further submit that the accused is the son of the deceased Sundaram and while surrendering before PW1, the accused has categorically stated that Sundaram had sold his land and the sale consideration of a sum of Rs.80,000/- was given to his elder brother and hence, the accused demanded his share amount of Rs.40,000/-,



but, Sundaram denied the same and having enraged over the same, the accused caught hold of the head of his father and slammed it on the wall and therefore, his father got fainted and afterwards, the accused chopped the hip of his father with axe and placed the body in a gunny bag in a pit near his bathroom and closed the pit with jack fruit tree leaves. In his confession statement, the accused has categorically stated that on the next day, when his mother and neighbours questioned about Sundaram, he told them that his father went to Tirupathi and then, went to Perambalur. Further, the accused himself voluntarily surrendered before PW1/VAO and gave confession statement before PW17, pursuant to which, material objects have also been seized. Therefore, the prosecution has prove its case beyond all reasonable doubts and there is no reason warrants interference of this Court in the judgment of the Court below.

6. We have considered the submissions made on either side and perused the records.

7. It is the case of circumstantial evidence and the chain of events must be unbroken as to rule out all and every possibility of the innocence of



the accused. Whether such circumstances are in the case on hand have to be considered. The Court below convicted the accused solely on the evidence of PW1/VAO and PW17/Investigating Officer and all other witnesses crucial to the case have been treated as hostile by the prosecution. The entire prosecution case commences, as the accused surrendered before PW1 and made voluntary confession statement, based on which, the crime came to the light.

8. When the entire prosecution story is that the accused surrendered before PW1 and made voluntary confession in the presence of Village Assistants, who were cited as LW2 to LW4 in the final report and had spoken about the surrender and confession of the accused before PW1, they were not examined as witnesses in this case. From the cross-examination of PW1, it reveals that he permanently resides in Namakkal and would travel from Namakkal to Pudhuchatram to attend his office. According to PW1, his office working hours is between 10.00 a.m. and 5.00 p.m., whereas, the alleged surrender and voluntary confession of the accused was at 6.00 a.m. on 18.02.2010 in the office of PW1. From the prosecution side, there is no explanation as to why and how PW1 was at his office at



6.00 a.m. on the said date, which is an extraordinary situation. According to PW1, the accused surrendered and confessed before him at around 6.00 a.m. and he prepared the special report (Ex.P28) and handed over the same to PW17. According to PW1, PW17 arrested the accused and on enquiry, the accused had given voluntary confession statement, pursuant to which, they went to the place of occurrence, where, PW17 prepared observation mahazar (Ex.P10) at 7.00 a.m. in the occurrence place. PW17 categorically deposed that PW1 along with the accused and special report (Ex.P28) appeared before him at 7.00 a.m., and arrested the accused at 8.00 a.m. and on enquiry, the accused has given confession statement voluntarily at 8.30 .am. and had reached the scene of occurrence and prepared observation mahazar (Ex.P10) at 9.30 a.m. in the presence of PW1. This contrary regarding the time as per the evidence of PW1 and PW17, who were the only supporting witness, creates a serious doubt with regard to the alleged surrender and confession.

9. It is also to be seen that the accused was residing in Perambalur and he was not known to PW1 earlier to the date of surrender and this itself is highly doubtful surrender as to what prompted the accused to surrender



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before PW1, that too, after 21 days from the date of alleged occurrence.

With regard to the medical evidence projected by the prosecution, the evidence of PW14-Dr.Rajmohan, who conducted autopsy, had deposed that the body was in a highly decomposed state, due to which, the injuries on the body and cause of death were not ascertained by the prosecution through PW14 and that being the case, the identity of the body and corroboration of injuries as mentioned in the alleged confession of the accused is highly doubtful. The theory of the prosecution is that the body was buried for 21 days at one foot depth in a residential area very close to the house and road is highly unbelievable. The prosecution has failed to establish the presence or involvement of the accused in the crime nor applied or established the last seen theory to charge the accused. None of the prosecution witnesses deposed that the presence or involvement of the accused nor his company with the deceased Sundaram immediately prior to the occurrence. Apart from PW1 and PW17, all other crucial witnesses turned hostile. PWs.2 to 13 were not supporting the prosecution case and they were treated as hostile by the prosecution and even during their cross-examination by the prosecution, nothing has been elicited against the accused.



10. It is to be noted that an extrajudicial confession must be established to be true and made voluntarily and in a fit state of mind. The extra-judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extrajudicial confession should inspire the confidence and the Court should find out whether there are other cogent circumstances on record to support it.

11. In this case, the evidence of PW1 is not reliable one for the reason that even according to PW1, he permanently resides in Namakkal and would travel from Namakkal to Pudhuchatram to attend his office. In this case, the alleged surrender of the accused before him was at 6.00 a.m on 18.02.2010 in his office, where, his Assistants were also present. Though the Village Assistants have been cited as LW2 to LW4 in the final report, they have not been examined as witnesses in the case for the reasons best known to the prosecution, which is fatal to the prosecution.

12. Taking into consideration the above facts, this Court is of the view that the judgment of the Court below is erroneous and contrary to the facts of the case and settled position of law.



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In the result, this criminal appeal is allowed by setting aside the judgment dated 06.07.2019 passed in S.C.No.2 of 2016 on the file of the Principal Sessions Court, Namakkal and the accused stands acquitted. Fine amount, if any, paid by the accused, shall be refunded to him. Bail bond, if any executed, shall stand discharged. The accused shall be released, if not required in any other case.

(P.V., J.) (M.J.R., J.)
27.01.2026

nsd

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1.The Principal Sessions Judge,
Namakkal.

2.The Superintendent, Central Prison, Coimbatore.

3.The Inspector of Police,
Puduchatram Police Station,
Namakkal District.

4.The Public Prosecutor,
Madras High Court, Chennai – 600 104.



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