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Crl.A.No.637 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2026

CORAM :

**THE HON'BLE MR. JUSTICE P.VELMURUGAN
and
THE HON'BLE MR. JUSTICE M.JOTHIRAMAN**

Crl.A.No.637 of 2019

M.Raja

... Appellant / Single Accused

Vs.

State Represented by
The Inspector of Police,
Viruthampet Police Station,
Viruthampet, Vellore District,
Crime No.158/2014

... Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374(2) Criminal Procedure Code, against the judgment and order dated 29.04.2019 in S.C.No.161 of 2017 passed by the learned Additional District and Sessions Judge (FTC), Vellore District.

For Appellant : M/s.V.Rajamohan
and Mr.C.R.Malarvannan

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



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JUDGMENT

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M.JOTHIRAMAN, J.

The appellant/ sole accused has preferred this Criminal Appeal as against the judgment dated 29.04.2019 in S.C.No.161 of 2017 passed by the learned Additional District and Sessions Judge (FTC), Vellore District in and by which he was convicted and sentenced as under:

Conviction under Section	Sentence of Imprisonment
302 IPC	Life Imprisonment with a fine of Rs.1,000/- in default to undergo 1 year Rigorous Imprisonment
201 IPC	7 years Rigorous Imprisonment with a fine of Rs.1,000/- in default to undergo 1 year Rigorous Imprisonment

The sentences were ordered to run concurrently.

2. Brief case of the prosecution is as follows:

2.1. PW1- Tr.Selvam is the father of the deceased Rajesh. He states that he is running an Hollow Bricks company. The accused joined under him as Hollow Brick Machine Operator in the year 2001. At that time, the accused borrowed a sum of Rs.10,000/- as advance. Thereafter, PW1 deducted a sum of Rs.1,000/- from his salary. The accused demanded



advance amount and the same was refused by PW1. Hence, there was a quarrel between the deceased and the accused. PW1 intervened and pacified them.

2.2. On 14.05.2014, PW1 handed over his two wheeler in a mechanic shop to get serviced. PW1 proceeded to the said mechanic shop along with his son / deceased. Thereafter, PW1 handed over the two wheeler to the deceased and instructed him to visit the Hollow Brick Company. PW1 gone to Senkuttai in another vehicle. After some time when PW1 came to his Hollow Brick Company, the two wheeler which was drove by the deceased stood in front of his Hollow Brick company's office. PW1 tried to contact his son / deceased through his mobile phone, but it was switched off. PW1 searched for the deceased and found blood stains on the Hollow Block Stone and the blood stains runs to few distance, which also lead to the well which belongs to one Sivalingam / PW9.

2.3. PW1 lodged a complaint before Viruthampet Outpost Police station. Thereafter police officials and fire service men came there and with the help of motor, water was drained through out night and at 6.00



a.m., found the body of his deceased son Rajesh in the said well. After taking the dead body, PW1 has identified the deceased body.

2.4. PW2- Tr.Manikandan, relative of PW1, deposed that he knew the accused. On 14.05.2014 at 3.00 p.m., he went to PW1's Hollow Brick company. While he was proceeding to Velangadu Temple festival, he intended to see his uncle / PW1 and the deceased at 3.00 p.m. He saw the deceased and the accused were chatting and he could not hear the said conversation since the accused used to speak very low and feeble. PW2 asked the deceased about PW1, who in-turn stated that his father / PW1 had gone to his house to have lunch. Thereafter, PW2 went to Velangadu. On the same day at about 5.30 p.m., he received an information from PW1 that the deceased was missing, that the company was left open and blood stains were found in the Hollow Bricks, which were stocked. PW2 and PW3 rushed to the Hollow Brick company and saw that there was blood stains in the Hollow Bricks and the blood stains proceeded towards the well in the land belonging to one Sivalingam / PW9. PW1 lodged the complaint and thereafter, police and fire service people came to that place where the well is situated, drained out water by motor throughout the night and finally on the next day at 6.00 a.m. found out a dead body.



2.5. PW3- Tr.Raja is also the relative of PW1. PW1 is the paternal uncle of PW3. PW3 also deposed in similar version of PW2.

2.6. PW4- Tr.Janakimmal, who is working under PW1, deposed that the accused was working under PW1 for the past 3 years and she is also working under PW1 in the Hollow Brick company. The accused used to ask cash from the deceased and the also deceased also used to ask cash from the accused. On 14.05.2014, she went to the temple car festival and heard the occurrence and came to PW1's Hollow Brick company.

2.7. PW5- Tr.Boopathy, who is the elder brother of PW1, deposed that he gone to PW1's Hollow Brick company and saw that there was blood stains. He also deposed that often there were quarrel between the accused and the deceased with regard to money dispute.

2.8. PW6- Tr.Elangovan, deposed that on 14.05.2014 at about 4.30 p.m., while he was proceeding in a school road, the accused came out from a thorny bush. On the same day at 5.00 p.m., PW1 called him and informed that his son was missing. During the enquiry conducted by police, he informed about the way he saw the accused.



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2.9. PW7- Tr.Mohan deposed that on 14.05.2014, he came to know

that someone murdered the deceased and he gone to the place where the deceased body was found in the Well and the police and fire service people came there and after draining out water from the well bu using motor, the deceased body was found from the Well.

2.10. PW9- Tr.Sivalingam deposed that he knew the accused. On 14.05.2014 there was a temple festival in Velangadu. After attending the festival, he came to his land at about 6.00 p.m. At that time, huge people have gathered in his land near to the Well and also police gathered at PW1's Hollow Brick company. Police and Fire Service people came to that place and they drained water from the Well using motors and on the next day morning at about 6.00 a.m., they have taken the deceased body from the Well, which belongs to him.

2.11. PW10- Tr.Anbarasu / Village Administrative Officer deposed that on 15.05.2014 at 7.30 a.m., he gone near the land belongs to PW9. Police arrived there and prepared Observation Mahazar in his presence and he has signed as witness in the Observation Mahazar and the signature of PW10 found in the Observation Mahazar is Ex.PW2. The police have



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also prepared Rough Sketch. PW10's assistant also signed as witness in the Observation Mahazar and the signature of his Assistant Mr.Ravi found in the Observation Mahazar is Ex.P3. PW10 further deposed that at 11.00 a.m., police have seized M.O.1- Black Colour Nokia Cellphone, M.O.2- Airtel Simcard, M.O.3 – Purse, M.O.4- Driver Licence of the deceased and M.O.5- Bunch of Keys under Seizure Mahazar and his signature found in the said Mahazar is Ex.P4 and the signature of his Assistant is Ex.P5.

2.12. Thereafter, at 11.15 a.m., police also recovered M.O.6- Blood Stained Hollow Brick and M.O.7- ordinary Hollow Brick stone under Mahazar in which he signed as witness and the signature of PW10 and his Assistant found in the said Mahazar is Exs.P6 and P7 respectively. At about 11.20 p.m. on 15.05.2014, police also recovered M.O.8 – Blood Stained Black Jellystone weighing 1 Kg under Mahazar, in which PW10 signed as witness and the signature of PW10 and his Assistant found in the said Mahazar is Exs.P8 and P9 respectively. At 11.30 a.m., in the land belonging one Premavalli, police recovered Blood Stained Calotropis Gigantea plant – M.O.8 under Seizure Mahazar, in which PW10 signed as witness and the signature of PW10 and his Assistant found in the said Mahazar is Exs.P10 and P11 respectively.



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2.13. At 11.45 a.m., police also recovered in an old canal in the land of one Ramachandran, Blood Stained Soil- M.O.10 and Unstained Soil- M.O.11 under Mahazar, in which PW10 signed as witness and the signature of PW10 and his Assistant found in the said Mahazar is Exs.P12 and P13 respectively. At 11.50 a.m., in the land belonging to one Ramachandran at T.K.Puram, police recovered Blood Stained Soil – M.O.12 and Unstained Soil – M.O.13 under Seizure Mahazar and the signature of PW10 and his Assistant found in the said Mahazar is Exs.P13 and P14 respectively. At 12.30 noon, in the Hollow Bricks company belonging to one Selvam, police recovered White Colour Transparent Distilling Cloth from a Hollow Brick – M.O.14,, White Cloth- M.O.15, White Colour Ballpoint Pen – M.O.16 under Seizure Mahazar and the signature of PW10 and his Assistant found in the Mahazar is Exs.P16 and P17 respectively.

2.14. In continuation of investigation, at 1.30 p.m., police arrested the accused who was standing near Vanjur Government Higher Secondary School. On enquiry, the accused voluntarily gave confession statement, in which PW10 signed as witness and the signature of PW10 and his



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Assistant found in the said confession statement is Exs.P18 and P19 respectively and based on his confession statement, the material objects were recovered under Mahazar. At 2.30 p.m., near Vanjur Government Higher Secondary School, police recovered from the accused 2 Sovereign Heart Shaped Dollar fixed Gold Chain – M.O.17, One pair of Chappal – M.O.18 under Seizure Mahazar and the signature of PW10 and his Assistant found in the said Mahazar is Exs.P21 and P22 respectively. Thereafter, at 3.30 p.m., in the thorny bush at Paalar Canal at T.K.Puram, police recovered Blood Stained Black Jellystone weighing 3 Kgs – M.O.19 under Seizure Mahazar and the signature of PW10 and his Assistant found in the said Mahazar is Exs.P23 and P24. At 4.30 pm., near T.K.Puram Velangadu, police recovered the dresses worn by the accused, namely Lungi – M.O.20, Baniyan – M.O.21, T.Shirt – M.O.22 under Seizure Mahazar and the signature of PW10 and his Assistant found in the said Mahazar is Exs.P25 and P26 respectively.

2.15. PW11- TR.Murugadoss, Fire Service Official deposed that on 14.05.2014, he had received a call from PW2 that there is a suspicion of a dead body found in the well. Upon getting oral permission from PW9, he gone to that place, drained out water from the well from night



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9.00 p.m. onwards and on the next day morning at 6.00 a.m., they found a dead body in the said well.

2.16. PW12- Tr.Ashok Kumar, Forensic Analyst, deposed about the materials received from the concerned Court and he had issued Viscera Report – Ex.P27, Biological Report- Ex.P28, Serology Report- Ex.P29, Biology Report-Ex.P30 and Serology Report – Ex.P31.

2.17. PW13- Tr.Arunkumar, Sub-Inspector of Police deposed that on 14.05.2014, he received a complaint from PW1 at 20.15 hours and registered a case in Crime No.158 of 2014 for Man Missing. The Registered FIR is Ex.P32. PW15-Tr.Inbakumar, then Special Sub-Inspector of Police deposed that he had handed over the dead body along with the requisition letter under Ex.P33 given by the Inspector of Police, before the Professor of the Government Hospital for autopsy. After conducting autopsy, he had handed over the dresses worn by the deceased M.Os.23 to 26.

2.18. PW16- Tr.A.T.Ramachandran, then Inspector of Police deposed that upon receipt of a copy of the First Information Report under



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Ex.P32 from PW13, he took up the case for investigation, proceeded to the scene of occurrence and prepared Observation Mahazar- Ex.37 and Rough Sketch – Ex.P36. He enquired the witnesses and recorded their statements. On 15.05.2014 at 06.00 a.m., Fire Service authorities after draining out water from the well, found the dead body of the deceased in the well and the deceased body was kept in the land. He visited that place and prepared Observation Mahazar- Ex.39 and Rough Sketch – Ex.P38. He conducted inquest over the dead body of the deceased in the presence of Panchayatdars and witnesses. The Inquest Report is Ex.P40. In order to ascertain the cause of death, he has given requisition through PW15 to conduct autopsy. On 15.05.2014 at 11.00 a.m., in the present of PW10 / VAO and his Assistant – Ravi, he seized M.Os.1 to 5 under Mahazar- Ex.P41. Thereafter, he altered the Sections into 302 and 201 IPC. The Alteration Report is Ex.P42. On 15.05.2014 between 11.15 a.m. and 3.00 p.m., he recovered various Material Objects under Seizure Mahazars Exs.P42 to P49 in the presence of PW10 and his Assistant Ravi. In continuation of his investigation, he arrested the accused on 15.05.2014 at 1.30 p.m. on Vanjiyur Government Higher Secondary School in the presence of PW10 and his Assistant.



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2.19. PW17- Tr.Thirunavukkarasu, then Inspector of Police, deposed that he continued with the investigation conducted by PW16. He examined the witnesses and recorded their statements. Upon completion of investigation, he has laid the final report against the accused.

2.20. In order to prove the charges framed against the accused, the prosecution has examined PWs.1 to 16, marked Exs.P1 to P52 and produced 22 material objects. Upon completion of the prosecution side evidence, when the accused was questioned under Section 313(1)(b) CrPC with regard to incriminating circumstances appearing against them, he denied the same as false and pleaded innocence. On the side of the defence, no witness was examined and no document was marked.

2.21. Upon appreciation of oral and documentary evidence, the Court below found that the prosecution has proved its case beyond all reasonable doubt and convicted the accused as stated above. Aggrieved over the same, the appellant / accused has preferred this appeal.

3. The learned counsel appearing for the appellant/accused would submit that it is a case of circumstantial evidence and the prosecution has



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miserably failed to prove its case beyond all reasonable doubt. The prosecution has failed to prove the chain of circumstances which are pointing the guilt towards the accused. The Trial Court erred in considering the circumstances put forward by the prosecution are not conclusive nature and are not sufficient to connect the accused with the crime. The prosecution has relied upon the evidence of PWs.2 and 3 to prove the Last Seen Theory and the evidence of PWs.2 and 3 are unnatural and there is no witness that lastly the accused and the deceased were seen together in PW1's Hollow Brick company at 3.00 p.m., on 14.05.2014. If really PW1 received the information from PWs.2 and 3 that the deceased and the accused were lastly seen in his company, he could have mentioned in his complaint under Ex.P1 with regard to suspicion over the accused, whereas in Ex.P1-complaint, there is no mention about the name of the accused and there is no whisper about the accused in the complaint or in the First Information Report, which came to be lodged on 14.05.2014 at 21.00 hours. The Trial Court ought to have considered that recovery is one of the linking facts in the chain of circumstances in a case of circumstantial evidence. The prosecution has miserably failed to examine any witness to prove the motive existed between the deceased and the accused. PWs.2 and 3 are close relatives of PW1 and therefore, their



witnesses cannot be taken into account. Last Seen Theory has been falsified through the evidence of PW1 and lodging of complaint- Ex.P1 by PW1 on the same day at 9.00 p.m. The prosecution has failed to prove the nexus between the weapon used in the alleged crime with the accused. The Court below ought to have seen that the prosecution has not only failed to prove the chain of circumstances, but also failed to establish the circumstance itself and without properly appreciating the oral and documentary evidence, the Court below had convicted the appellant/accused and sentencing for the major punishment of Life Imprisonment is unsustainable in law.

4. *Per contra*, learned Additional Public Prosecutor appearing for the respondent would submit that the prosecution has proved the motive for the occurrence through the evidence of PW1, PW4 and PW5, who have categorically deposed that the accused frequently involved in quarrel with the deceased with regard to payment of advance amount. The prosecution has also proved the Last Seen Theory through the evidence of PWs.2 and 3, who have categorically deposed that on 14.05.2014 at 3.00 p.m., they have seen that the accused and the deceased were chatting in the PW1's Hollow Brick company and they have also deposed that when



they asked the deceased about PW1, the deceased in-turn informed that his father / PW1 has gone to home for lunch. The recovery of material objects in pursuance to the confession statement of the accused through the evidence of PW10 is also corroborated by the evidence of PW14-Investigating Officer. The prosecution has proved the chain of circumstances without any break or missing link and the Court below, upon appreciating the oral and documentary evidence, has rightly found the appellant guilty and sentenced him to undergo Life Imprisonment and there is no infirmity or perversity in the judgment of the Court below.

5. We have considered the submissions made and also perused the entire records carefully.

6. According to the prosecution, the accused was working as Machine Operator in PW1's Hollow Brick company. The deceased was assisting his father / PW1 in the said company. The accused borrowed a sum of Rs.10,000/- from PW1 as advance about a year back from the date of occurrence. The accused had repaid only Rs.1,000/- and was dodging PW1 for the remaining amount. Hence the deceased insisted the accused to return the money. Having this grudge in his mind, on 14.05.2014 at



about 3.00 pm., the accused assaulted the deceased with a stone on the head of the deceased and the deceased died on the spot itself. The accused took the gold chain dollar from the deceased and thereafter, the accused thrown the dead body of the deceased into the well in the land belonging to PW9. When PW1 tried to contact his son / deceased through his mobile phone, it was switched off. PW1 visited his Hollow Brick company and found Blood Stains on hollow bricks and the stains led to the Well in the land of PW9. PW1 lodged the complaint before PW13.

7. The law is well settled that in a criminal case irrespective of the gravity and nature of charges, the prosecution is under an obligation to prove the guilt of the accused by leading evidence, which is convincing and links the accused with the crime beyond all manner of reasonable doubt. In a case based purely on circumstantial evidence, the onus is upon the prosecution to prove the chain of circumstances beyond all manner of doubt. The law in respect of the same has been crystallized in ***Sharad Birdhichand Sharda v. State of Maharashtra (1984 (4) SCC 116)***, wherein, it was held that:-

“153. 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:



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(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 v. State of Maharashtra [(1973) 2 SCC 793] where the 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

(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.”



8. The prosecution, in order to prove the guilt of the appellant/accused, has relied upon the following circumstances:

(I) Motive

(II) Last Seen Theory

(III) Recovery of Material objects.

MOTIVE

9. As per the evidence of PW1, who is the father of the deceased, he is running an Hollow Bricks company in which the accused working as Hollow Brick Machine Operator in the year 2001. The accused borrowed a sum of Rs.10,000/- as advance and PW1 deducted a sum of Rs.1,000/- from his salary. When the accused demanded advance amount and the same was refused by PW1, there was a quarrel between the deceased and the accused and PW1 intervened and pacified them. On 14.05.2014, PW1 proceeded to the mechanic shop along with his son / deceased to get his vehicle serviced. Thereafter, PW1 handed over the two wheeler to the deceased and instructed him to visit the Hollow Brick Company. PW1 gone to Senkuttai in another vehicle. After some time when PW1 came to his Hollow Brick Company, the two wheeler which was drove by the



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deceased stood in front of his Hollow Brick company's office. PW1 tried to contact his son / deceased through his mobile phone, but it was switched off. PW1 searched for the deceased and found blood stains on the Hollow Block Stone and the blood stains runs to few distance, which also lead to the well which belongs to one Sivalingam / PW9. Therefore, PW1 lodged a complaint before Viruthampet Outpost Police station, based on which the police officials and fire service men came there and with the help of motor, water was drained through out night and at 6.00 a.m., on the next day morning, found a dead body in the said well. After taking the dead body, PW1 has identified the deceased body as his son.

10. PW4, an employee of PW1, in her evidence, deposed that the accused was working under PW1 for the past 3 years and she is also working under PW1 in the Hollow Brick company. The accused used to ask cash from the deceased and the also deceased also used to ask cash from the accused. On 14.05.2014, she went to the temple car festival and heard the occurrence and came to PW1's Hollow Brick company. PW5, who is the elder brother of PW1, deposed that he gone to PW1's Hollow Brick company and saw that there was blood stains. He also deposed that often there were quarrel between the accused and the deceased with regard to money dispute.



11. PW5 deposed that frequently the accused involved in quarrel with the deceased with regard to money dispute and the same has been witnessed by him. As per the evidence of PW1, he has paid a sum of Rs.10,000/- to the accused in the year 2001 when the accused joined in PW1's company as Machine Operator. PW1 also stated that he deducted Rs.1,000/- from the salary of the accused. According to PW1, the occurrence was held on 14.05.2014. Though Pws.4 and 5 have stated that the accused had received money from PW1 and they have seen the quarrel between the deceased and the accused, but PW4 and PW5 have not stated any specific date on which the accused had demanded money and on which date the deceased demanded the accused for return of the money.

12. PW2 and PW3 have categorically stated that on 14.05.2014 at about 3.00 p.m, they gone to the Hollow Brick company of PW1 where they saw that the deceased and the accused were taking with each other. When they have asked the deceased about PW1, the deceased in-turn replied that his father / PW1 had gone to the home to have lunch. From the evidence of PWs.2 and 3, it reveals that on the date of the alleged occurrence on 14.05.2014 at about 3.00 p.m., the deceased and the accused were chatting with each other. They have not stated anything



about as to whether the deceased and the accused were fighting or they have any wordy quarrel or anything.

13. The evidence of PWs.4 and 5 are not sufficient to prove that the accused had motive to commit the offence, since they have not specifically stated the exact date and time and also the details of the advance amount paid by PW1 and the exact date and time as to when the deceased demanded money from the accused. As per the evidence of PW1, he had paid a sum of Rs.10,000/- as advance when the accused joined under him as Machine Operator in the year 2001, whereas the alleged occurrence said to have taken place in the year 2014 and there is no proximity between the date of occurrence and the date of demand of amount by the deceased from the accused. Therefore, the prosecution has failed to prove the motive for the occurrence.

LAST SEEN THEORY

14. PW2 and PW3 are the relatives of PW1. As per the evidence of PW2 and PW3, on 14.05.2014 at 3.00 p.m., they went to PW1's Hollow Brick company. While they were proceeding to Velangadu Temple festival, they intended to see PW1 and the deceased at 3.00 p.m. At that



time the deceased and the accused were chatting and they could not hear the said conversation since the accused used to speak very low and feeble.

PW2 asked the deceased about PW1, who in-turn stated that his father / PW1 had gone to his house to have lunch. Thereafter, PW2 and PW3 went to Velangadu. On the same day at about 5.30 p.m., they received an information from PW1 that the deceased was missing, that the company was left open and blood stains were found in the Hollow Bricks, which were stocked. They rushed to the Hollow Brick company and saw that there was blood stains in the Hollow Bricks and the blood stains proceeded towards the well in the land belonging to one Sivalingam / PW9. PW1 lodged the complaint and thereafter, police and fire service people came to that place where the well is situated, drained out water by motor throughout the night and finally on the next day at 6.00 a.m. found out a dead body.

15. As per the evidence of PWs.2 and 3, they have lastly seen the accused together with the deceased in PW1's company on 14.05.2014 at 3.00 p.m. It is also stated that the accused used to talk in low voice and they could not heard anything as to what was the quarrel between the deceased and the accused on the said day. They categorically questioned



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about PW1 and the deceased in-turn replied that his father had gone to home to have lunch. They have also stated that on the same day at 5.30 p.m., PW1 called them and enquired about the whereabouts of the deceased. As per the evidence of PW1, after lunch, he went to his Hollow Brick company and saw that the deceased was not in his company and saw that the two wheeler which was driven by the deceased was parked in front of his office room.

16. As per the evidence of PW1, he had lodged a complaint before PW13- Sub Inspector of Police at 8.15 p.m. and the case was registered in Crime No.158/2014 for Man Missing and at 9.00 p.m., FIR – Ex.P32 was also registered. In the complaint lodged by PW1, it has been clearly stated that he has instructed the deceased to buy lunch for one Murugan, who is working in his company, after taking his vehicle from the service centre. It has also been stated that PW1 had gone to his house in Senkuttai to have lunch. Thereafter, PW1 went to his Hollow Brick company at 4.00 p.m., and saw that the doors of the company was open and the two wheeler drove by the deceased bearing Reg.No. TN23 M 4588 was parked in front of the Hollow Brick company office. It is also stated that PW1 noticed blood stains in the Hollow Bricks. He also searched for his son/deceased



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in nearby places and he could not find the deceased and therefore, requested to find out the deceased. In the complaint under Ex.P1, there is no mention about anything suspicion over the accused in the said complaint. Simply the complaint came to be lodged to find out the deceased.

17. As per the evidence of PW2 and PW3, if really PWs.2 and 3 have witnessed the accused and the deceased taking together in PW1's company at 3.00 p.m., they have also stated that at 5.30 p.m, they received phone call from PW1 that the deceased whereabouts is unknown. If it is so, PW1 could have stated in his complaint. The complaint in Ex.P1 came to be lodged in the night hours at 8.15 p.m. and he could have stated the information received from PWs.2 and 3 in the said complaint. Therefore, the evidence of PW2 and PW3 is contradictory to the evidence of PW1 with regard to lastly seen the accused and the deceased in the PW1's Hollow Brick company at 3.00 p.m. The evidence of PWs.2 and 3 is unreliable one which creates serious doubt whether they have really seen the accused and the deceased in PW1's Hollow Block company at 3.00 p.m. The evidence of PW2's 2 and 3 are not sufficient to establish the case of the prosecution with regard to Last Seen Theory.



RECOVERY OF MATERIAL OBJECTS

18. As per the evidence of PW10- VAO, on 15.052014 at 1.30 p.m. PW16 arrested the accused who was standing near Vanjur Government Higher Secondary School. On enquiry, the accused voluntarily gave confession statement, in which PW10 signed as witness and the signature of PW10 and his Assistant found in the said confession statement is Exs.P18 and P19 respectively and based on his confession statement, the material objects were recovered under Mahazar. At 2.30 p.m., near Vanjur Government Higher Secondary School, police recovered from the accused 2 Soverign Heart Shaped Dollar fixed Gold Chain – M.O.17, One pair of Chappal – M.O.18 under Seizure Mahazar and the signature of PW10 and his Assistant found in the said Mahazar is Exs.P21 and P22 respectively. Thereafter, at 3.30 p.m., in the thorny bush at Paalar Canal at T.K.Puram, PW16 recovered Blood Stained Black Jellystone weighing 3 Kgs – M.O.19 under Seizure Mahazar and the signature of PW10 and his Assistant found in the said Mahazar is Exs.P23 and P24. At 4.30 pm., near T.K.Puram Velangadu, police recovered the dresses worn by the accused, namely Lungi – M.O.20, Baniyan – M.O.21, T.Shirt – M.O.22 under Seizure Mahazar and the signature of PW10 and his Assistant found in the said Mahazar is Exs.P25 and P26 respectively. PW10 and his



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Assistant also signed as Mahazar Witness in respect of recovery of material objects in M.os.1 to 16 by the Investigating Officer / PW16 between 11.00 a.m. to 2.30 p.m. on 15.05.2014.

19. PW16/Investigating Officer deposed that on 15.05.2014, he arrested the accused in the present of PW10/VAO and his assistant Ravi. The official evidence of PW10 and 16 corroborates the recovery of material objects.

20. A perusal of Ex.P34 shows that one Doctor K.Selvaraj signed in Ex.P34-Postmortem Certificate and the same doctor has issued Ex.P35 – Final Opinion. In Ex.P35 it has been stated that the deceased would appear to have died due to head injury sustained. Failure to examine the autopsy doctor would lead to weakening the prosecution case. Without the doctor's testimony, postmortem certificate cannot be used as a proof of document to establish cause of death as conclusive. Non-examination of the autopsy doctor would cause denial of accused right to challenge the medical findings through cross examination, which is essential for ascertaining the accuracy regarding injuries and the weapon used for the crime. The prosecution has failed to examine the Doctor who conducted



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autopsy, which is fatal to the prosecution case. The Court below has failed to mention through whom Exs.P34 and P35 came to be marked. It is to be noted that a report can be marked as an exhibit through the Investigating Officer or through the doctor who knows the signature of the doctor who issued the certificate. If the doctor who issued the certificate is unavailable, another doctor who is familiar with the handwriting and signature of the doctor who issued the certificate can verify the document and depose evidence.

21. The prosecution has miserably failed to prove its case beyond all reasonable doubt. In the present case of circumstantial evidence, the prosecution has failed to prove the Motive, Last Seen Theory and Medical Evidence. The official witness of PW10 and PW16 alone with regard to recovery of material objects from the accused in pursuant to the admissible portion of the confession statement of the accused alone is not sufficient to prove the guilt of the accused. It is highly unsafe to convict the accused solely on the basis of the evidence of PW10 and PW16, who are official witnesses in this case.

22. The Trial Court, without properly appreciating the oral and



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documentary evidence, has found the appellant/accused guilty, which is unsustainable in law. There are merits in this appeal and the judgment of conviction and sentence is liable to be set aside.

23. Accordingly, *this Criminal Appeal stands allowed* and the judgment of conviction and sentence dated 29.04.2019 in S.C.No.161 of 2017 passed by the learned Additional District and Sessions Judge (FTC), Vellore District is set aside. The appellant/accused is acquitted of all the charges and he is set at liberty forthwith unless his presence is required in connection with any other case. Fine amount, paid if any, shall be refunded to the appellant. Bail bonds executed shall stand cancelled.

[P.V., J.] [M.J.R., J.]
24.02.2026

Index : Yes / No
Internet : Yes / No
Jvm

To

1. The Additional District and Sessions Court (FTC),
Vellore District, Vellore.
2. The Superintendent of Prison,
Central Prison, Vellore.
3. The Inspector of Police,
Viruthampet Police Station,

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Viruthampet, Vellore District,

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4.The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J.
and
M. JOTHIRAMAN, J.

Jvm

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Crl.A.No.637 of 2019

24.02.2026