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CRL A No. 748 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-03-2026

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 748 of 2019

D.Pradeep

... Appellant/Sole Accused

v.

The State Represented By
The Inspector of Police,
Pallavaram Police Station,
Chennai-43.
(Crime No.1010/2010).

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, against the conviction of the appellant/sole accused and sentence imposed on him in S.C.134 of 2011 dated 03.10.2019 on the file of the learned Additional District and Sessions Judge, Chengalpattu and set aside the conviction and sentence and allow this appeal.

For Appellant:

Mr. R. Rajarathinam, Senior Counsel
for Mr. Karan and Uday

For Respondent:

Mr. S. Raja Kumar,
Additional Public Prosecutor



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Judgment

(Judgment of the Court was delivered by Sunder Mohan J.)

This Criminal Appeal has been filed by the sole accused, challenging the judgment dated 03.10.2019 in S.C.No.134 of 2011, on the file of the learned Additional District and Sessions Judge, Chengalpattu, whereby he was convicted for the offence under Section 302 of the IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for one year.

2(i) The gist of the prosecution case is that the appellant and the deceased were known to each other; that the appellant had borrowed a sum of Rs.20,000/- from the deceased; that the deceased had been demanding repayment of the said loan from the appellant frequently and enraged, the appellant decided to do away with the deceased; that on 11.12.2010, the appellant had called the deceased and promised to repay the amount; that the deceased and the appellant went in a two-wheeler to Pallavaram; and that at about 8.30 p.m., the appellant had asked the deceased to stop the vehicle and thereafter, he stabbed the deceased with a knife in the neck and caused the death of the deceased.



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(ii) PW6, a passer-by, found the deceased first at the scene of occurrence on 11.12.2010 and when he enquired with the deceased, the deceased had signalled that somebody had attacked him. PW16, a Constable who was on patrol duty, came to the occurrence place, met PW6, called the ambulance and informed PW21, the Investigation officer, about the occurrence. PW6 also had called PW4, the wife of the deceased, from the mobile phone of the deceased and informed her about the occurrence.

(iii) On coming to know of the occurrence, PW1, the father of the deceased, had lodged a complaint [Ex.P1] stating that his son was done to death by some unknown persons. On the said complaint, PW21 had registered the FIR [Ex.P10] in Cr.No.1010 of 2010 for the offence under Section 302 of the IPC. PW21 took up the investigation, went to the scene of the occurrence on 11.12.2010 at about 10.30 p.m., and prepared the rough sketch [Ex.P11] and also the observation mahazar [Ex.P2]. He seized the bloodstained shirt, bloodstained earth, the earth that was not bloodstained and the two-wheeler, i.e., Kinetic Honda bearing



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Regn.No.TN01 P 2705, from the scene of occurrence and produced the same before the learned Magistrate under Form-95.

(iv) Thereafter, on 12.12.2010 between 8.00 a.m. and 10.00 a.m. PW21 conducted an inquest in the presence of the panchayathars and prepared the inquest report [Ex.P12]. He examined PW3, PW8, PW9, PW13 and other witnesses. On 14.12.2010 at about 7.00 a.m., he arrested the accused in the presence of witness-PW14 and one Amaladoss. He recorded the confession of the accused and pursuant to the confession, seized a bloodstained black-coloured bag [M.O.6] in which 'LIVIYA' was written, a bloodstained knife [M.O.7] measuring 19cm in length, PAN card of the deceased [M.O.9] issued by the Income Tax Department, a keychain with two keys [M.O.8] in which it was written as 'இதயவாசல் சாரதி (Idayavasal Sarathi)' and 36 visiting cards [M.O.10] of 'AARATHY Charitable Trust', besides advertisement notices/pamphlets [Ex.P11] in the name of 'இதயவாசல் முதியோர் இல்லம் (Idayavasal Old Age Home)'.



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(v) After sending the dead body for postmortem and obtaining the postmortem report [Ex.P4] and obtaining the reports [Ex.P7 & Ex.P9] of the Scientific Officers, PW21 filed the final report against the appellant for the offence under Section 302 of the IPC before the learned Judicial Magistrate, Tambaram.

(vi) On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with. The case was committed to the Court of Sessions i.e., Principal District Sessions Court, Chengalpattu and was made over to the learned Additional District and Sessions Judge, Chengalpattu, for trial, which was taken on file as S.C.No.134 of 2011. The trial Court framed charges against the accused for the offences under Section 302 of the IPC and when questioned, the accused pleaded 'not guilty'.

(vii) To prove its case, the prosecution had examined 21 witnesses as P.W.1 to P.W.21 and marked 12 exhibits as Ex.P1 to Ex.P12, besides 20 material objects, viz., M.O.1 to M.O.20. When the accused was



questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. Though none were examined on the side of the accused, four documents were marked on his side as Ex.D1 to Ex.D4.

(viii) The trial Court found the appellant guilty of the offence under Section 302 of the IPC and convicted and sentenced him as stated above. Hence, the accused has preferred the instant appeal challenging the said conviction and sentence.

3.(i) Mr.Rajarathinam, learned senior counsel for the appellant submitted that the case is based on circumstantial evidence; that the prosecution relies upon three circumstances, such as motive, the fact that the deceased and the appellant were last seen together and the recovery of certain material objects from the residence of the appellant pursuant to his confession; that none of the circumstances have been conclusively established by the prosecution; that PW1 to PW5, who were examined to establish the motive have only stated that there was a loan transaction between the appellant and the deceased and do not speak about any prior



enmity between the appellant and deceased on account of the same; that PW8, PW9 and PW13 who are said to have last seen the deceased along with the appellant at the time of occurrence in a scooter cannot be believed as none of them had informed the said fact to PW3 (elder brother of the deceased) who was their office colleague; that it is too much of the co-incidence that all the three colleagues of PW3 met the appellant and the deceased on the date of occurrence at three different places and had seen them together; that these witnesses were examined by the police only on 12.12.2010; and that their statements were despatched to the learned Magistrate only on 16.12.2010 and their testimonies therefore, do not inspire confidence

(ii) The learned senior counsel further submitted that the recovery also cannot be believed as the seizure mahazar [Ex.P6] had been filled by two different persons; that the particulars of the material objects, viz., the bag and the knife, were written by one person and that of the remaining material objects, viz., the documents relating to the deceased, have been written by some other person and it shows that it has been interpolated later; and that in any case, the knife seized from the house of the deceased



has not been proved as the one said to have been used in the occurrence;
and hence, prayed for acquittal.

4. The learned Additional Public Prosecutor, *per contra*, submitted that PW1 to PW5 have uniformly stated that the deceased and the appellant had a loan transaction; that therefore, it has to be inferred that there has been prior enmity between the appellant and the deceased; that PW1, the father of the deceased, had stated that he came to know that the deceased went with the appellant to Pallavaram on the day of the occurrence; that the evidence of PW8, PW9 and PW13, who saw both the appellant and the deceased just prior to the occurrence, would further strengthen the prosecution case that the deceased was done to death by the appellant; that the recovery of the material objects also has been proved beyond reasonable doubt; that therefore, the impugned judgment is justified and does not call for interference.

5 (i) To prove its case, the prosecution had examined 21 witnesses. PW1 to PW5 are the father, younger brother, elder brother, wife and friend/ partner of the deceased, respectively. PW6 is the passer-by who



had first seen the deceased and had informed the constable PW16, who was on patrol duty and came to the occurrence place. PW7 is the witness to the seizure mahazar [Ex.P3]. PW8, PW9 and PW13 were PW3's colleagues and according to the prosecution they had seen the appellant and the deceased together in a two-wheeler at various places on the fateful evening prior to the occurrence. PW10 is the ambulance driver, who had taken the deceased to the hospital; PW11 is the shop owner near the place of the occurrence and is a hearsay witness. PW12 is the Doctor who had conducted the postmortem on the deceased and had found injuries on the neck and the jaws and had opined that the deceased died due to injury caused to all major vessels, trachea and haemorrhage and shock.

(ii) PW14 is the Village Administrative Officer, who had witnessed the confession of the appellant and the seizure of objects from the house of the accused. He had signed in Ex.P6 [Seizure Mahazar] as a witness. PW15 is the Constable who had assisted the investigating officer and handed over the body of the deceased to PW1 after the postmortem. As stated above, PW16 is the Constable, who met PW6 at the time of



occurrence and had informed the investigating officer [PW21] about the occurrence. PW17 is the Constable who had travelled with the deceased in the ambulance to the hospital. PW18 is the forensic officer, who had examined the articles seized from the scene of the occurrence and from the house of the deceased and found bloodstains on the said articles. PW19 is the Magistrate who conducted the Test Identification Parade and his proceedings and report were marked as Ex.P8 series; PW20 is the Deputy Director of Serology Department, who had opined that some of the material objects, viz., dress materials of the deceased, contained 'A' group blood and the blood group of the bloodstains in the earth, bike, knife and spectacles of the deceased could not be ascertained. His report is marked as Ex.P9. PW21 is the investigating officer.

6.(i) As stated above, the prosecution case is based on circumstantial evidence. The prosecution case relies upon three circumstances to bring home the guilt of the accused, viz., (a) motive (b) the deceased was last seen with the appellant at or about the time of the occurrence (c) the recovery of material objects from the house of the appellant, some of which belonged to the deceased. Before we examine



the circumstances, it has to be seen whether the prosecution has established that the deceased had suffered a homicidal death.

(ii) PW6 who had first seen the deceased, had deposed that the deceased signalled to him that somebody had cut him with a knife; PW16 the head constable, saw the deceased with serious injuries and fighting for his life. He had called PW21, the investigating officer and PW17, the Constable, who had taken the deceased to the hospital in an ambulance, where he was declared dead on arrival. PW12 is the Doctor, who conducted the postmortem on the deceased. He had noted an incised wound in the anterior aspect of the neck about 7cm from the chin and about 21cm in length extending from the left side of the neck to the right side of the neck and a few other injuries. He had opined that the deceased died due to injury caused to all major vessels and the trachea with haemorrhage and shock. PW12 has not been discredited in any manner. Therefore, the prosecution had established that the deceased suffered a homicidal death.



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7 (i) The next question is whether the appellant is guilty of any offence. As stated above, the prosecution had relied upon three circumstances. As regards the circumstance of motive, it is the prosecution case that the appellant and the deceased had prior enmity and the appellant had decided to do away with the deceased since the deceased was constantly harassing and demanding repayment of the loan, advanced by him to the appellant. The prosecution seeks to prove the said circumstance by the evidence of PW1 to PW5.

(ii) It is seen from the evidence of PW1 to PW5 that all of them were aware that the deceased had lent money to the appellant and that the appellant was delaying the repayment of the loan. However, none of the witnesses have stated that the appellant was enraged because of the constant demand made by the deceased for repayment and there was prior enmity on account of the same. The prosecution case is that since there was a loan, prior enmity has to be inferred. We are of the view that what has been established by the prosecution is only a loan transaction. Nothing more has been established to show that there was enmity due to



that and the appellant had decided to do away with the deceased since the deceased was demanding repayment of the loan.

(iii) Be that as it may. It is the version of PW1 that the deceased went with the appellant on 11.12.2010, as the appellant had promised to repay the amount by borrowing the said money from some person at Pallavaram. However, the evidence of PW2, the younger brother of the deceased, is to the effect that PW1 could not have known that the deceased went to Pallavaram with the appellant. In fact, PW2 also would add that the deceased had told him that he was going to Pallavaram. However, he did not state that the deceased told him that he was going to Pallavaram with the appellant.

(iv) PW3, the elder brother of the deceased, is not aware as to where the deceased went on the date of occurrence. PW4 is the wife of the deceased. She would state that the deceased informed her that he is going to meet the appellant at Pallavaram. However, PW4 had not told the police on the day of occurrence that the deceased went to meet the appellant at Pallavaram. In fact in the complaint [Ex.P1], PW1 had not



stated that the deceased left the house along with the appellant.

Therefore, the evidence of PW1 and PW4 that the deceased told them that he is meeting the appellant appears to be an afterthought.

8. (i) The next circumstance is the circumstance of being last seen together by PW8, PW9 and PW13. All three witnesses were the colleagues of PW3 (elder brother of the deceased). They all would state that they informed PW3 on the date of occurrence that they saw the deceased and the appellant together. However, PW3 in his deposition does not refer to any such conversation with any of the three witnesses. All three witnesses have stated in a parrot-like manner that they saw the deceased and the appellant in a Kinetic Honda Scooter.

(ii) PW8 saw the deceased and the appellant opposite to SNP company at Pallavaram at about 8.45p.m. and would state that he stopped the vehicle and asked them as to what they were doing there and further asked both of them to leave the place immediately. PW8 had not informed the police about the said fact on the same day, although he would claim that he came to know of the occurrence on the same day.



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(iii) PW9 also had stated that he saw the deceased and the appellant together at about 7.30p.m. near Velachery and therefore he suspected the involvement of the appellant.

(iv) The evidence of PW13 is to the effect that when he was proceeding towards Pallavaram Keezhkatalai, he saw the deceased and the appellant at 8.00 p.m., near Kamatchi Hospital.

(v) It is too much of a coincidence that the three colleagues of PW3 saw the deceased and the appellant together at three different places on the route in which the deceased and the appellant are said to have travelled on the fateful day and it is hard to believe their versions. Their versions, on the face of it, appears to be improbable and artificial. None of them had reported the fact of their seeing the deceased and the appellant immediately to the police. Though their Section 161(1) Cr.P.C. statements are said to have been recorded on 12.12.2010, the original records reveal that their statements were despatched to the Magistrate only on 16.12.2010. They are important prosecution witnesses and there



is no reason why their statements were sent belatedly, i.e., four days after the statements were said to have been recorded.

(vi) It is well settled that the statements of the witnesses recorded during investigation in cases involving serious offences, especially in a murder case, have to be despatched immediately to the Magistrate. It is pertinent to point out here that all the statements reached the Magistrate after the arrest of the appellant on 14.12.2010. It may not be out of place here to mention that the investigating officer in the cross-examination had admitted that he came to know that the appellant was involved in the offence even on 11.12.2010 between 10.45 p.m. and 11.30 p.m. Therefore, a serious doubt arises with regard to the prosecution case that only after the examination of these three witnesses the involvement of the appellant in the case was revealed. In fact, in the inquest report [Ex.P12] dated 12.12.2010, the investigating officer had recorded that the accused was not known.

(vii) The artificiality in the versions of these three witnesses is further strengthened by the fact that PW8 had gone to the extent of stating



that he stopped his vehicle and told the appellant and the deceased not to chat for a long time and leave the place immediately. PW8 had not seen anything untoward at that stage, to ask the two of them to leave the place immediately. There is no reason for PW8 to have made such a remark. That apart, PW8 had not stated so in his Section 161 Cr.P.C. statement before the investigating officer, which was admitted by the investigating officer in his cross-examination. Further, PW9 had also not told the investigating officer that he was passing through Velacherry after completing his work for the day in his Section 161 Cr.P.C. statement before the investigating officer. Therefore, the said improvements in their deposition also makes their versions highly doubtful. For all the reasons, we are of the view that the evidence of PW8, PW9 and PW13 would not be of any avail to the prosecution to establish the alleged circumstance that the deceased and the appellant were last seen together before the occurrence.

9. (i) As regards the recovery of the material objects, though a knife is said to have been recovered at the house of the appellant pursuant to his confession and the seizure mahazar was marked as Ex.P6, there is



no evidence to suggest that the said knife was used by the appellant to commit the offence. The Scientific Officer [PW20] had stated that the blood group in the bloodstains on the knife could not be ascertained. Further, we find that in Ex.P6, certain interpolations have been made with regard to the entries relating to the seizure of M.O.8 to M.O.11, which are the Income Tax Pan Card and other objects of the deceased, as the handwriting differs. This seizure also appears to be highly improbable, as there is no necessity for the appellant to collect the bag of the deceased with the above objects belonging to the deceased and keep it in his custody. In fact, as rightly pointed out by the learned Senior counsel, other valuable objects, viz., a gold chain and gold rings, were found in the body of the deceased and the appellant had not removed the same.

(ii) As rightly contended by the learned defence counsel, the above objects were found in the bag along with the bloodstained knife. Though the bag also had bloodstains, strangely, no bloodstains were found in any of the objects, viz., PAN Card, Keychain and other articles marked as M.O.8 to M.O.11. That apart, the witness-PW14 who had attested the



seizure mahazar, is a Village Administrative Officer and no independent witness was examined. In this case, we find that the evidence of the Village Administrative Officer does not inspire confidence. In any case, the recovery alone would not be of any significance since the other circumstances, viz., motive and last seen together, have not been established beyond reasonable doubt.

10.(i) It is also seen that the prosecution had failed to establish the ownership of the vehicle, which is said to have been ridden by the deceased with the appellant. Though the learned defence counsel would state that the vehicle was found 100 metres away from the scene of occurrence and therefore could not have been used by the deceased, we cannot infer anything adverse against the prosecution, as it is the prosecution case that the vehicle was parked and thereafter they both went to the place of the occurrence. In any case, we are of the view that the investigating officer [PW21] had not chosen to investigate whether the vehicle really belonged to the deceased. PW21 had admitted in his cross-examination that he did not conduct any investigation on this aspect since it was stated that the vehicle belonged to the deceased. This aspect



raises a serious doubt in the prosecution case. Either the ownership of the vehicle ought to have been established or the prosecution must have established that the vehicle was being regularly used by the deceased at the time of the occurrence. Though PW5 would state that the vehicle stood in the name of the Home, viz., 'Idhayavasal' run by the deceased, he had also not produced any document to substantiate the said fact. In fact, PW1 had admitted that he had not taken any steps to seek return of the vehicle.

(ii) The defence had marked Ex.D3 through the investigating officer. The investigating officer does not dispute the genuineness of the said document. In Ex.D3, the reply given by the Public Information Officer of the Regional Transport Office, Chennai (Central), Chennai-23, it is stated that the vehicle bearing Regn.No.TN01P2705 belonged to one J.David Kirubakaradass as on 20.10.2014. The reply of the Public Information Officer of the Regional Transport Office, Chennai (South), Chennai-41, suggests that it originally belonged to one T.Selvaraj.

(iii) The lapse in the investigation to ascertain the ownership of the



vehicle assumes significance in the light of the above document produced by the defence. That apart, it is seen that PW1 had stated that the registration of the vehicle is TN01PE2705 and the reply from the Public Information Officer of the Regional Transport Office, Chennai (Central), Chennai-23, suggests that there is no such registration number recorded in their registers.

11. In *Sharad Birdhichand Sarda v. State of Maharashtra*, reported in (1984) 4 SCC 116, the Hon'ble Supreme Court had held as follows:

“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:

(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 & Anr. v. State of Maharashtra*((1973) 2 SCC 793) where the following 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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

12. From the above narration of facts, it would be very clear that the prosecution had failed to establish any strong motive or the circumstance relating to the appellant and the deceased last seen together, as the evidence of PW8, PW9 and PW13 do not inspire confidence. The recovery also appears to be doubtful. The prosecution, therefore, has not established the circumstances conclusively and in any event, the circumstances do not form a complete chain pointing out only to the guilt



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of the accused. In the light of the evidence adduced on the side of the prosecution, the conviction and sentence cannot be sustained and therefore are liable to be set aside.

13. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed upon the appellant/accused for the offence under Section 302 of the IPC, vide judgment dated 03.10.2019 in S.C.No.134 of 2011, on the file of the learned Additional District and Sessions Judge, Chengalpattu, are set aside. The appellant/accused is acquitted of the charge. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

(A.S.M.,J.) (S.M.,J.)
18-03-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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**DR.ANITA SUMANTH J.
AND
SUNDER MOHAN J.**

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To

1. The Additional District and Sessions Judge,
Chengalpattu.
2. The Inspector of Police,
Pallavaram Police Station,
Chennai-43.
3. The Public Prosecutor,
High Court, Madras.

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