



Crl.A(MD)No.156 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.02.2026

CORAM:

**THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

Crl.A(MD)No.156 of 2023

R.Rajaguru @ Guru

... Appellant/Accused No.1

Vs.

The State,
Represented by the Inspector of Police,
Manachanallur Police Station,
Trichy District.
(Crime No.59 of 2017).

... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 374(2) of Cr.P.C.,
to call for the records and set aside the Judgment and conviction
dated 09.01.2023 by the learned II Additional District and Sessions
Court, Trichirappalli in S.C.No.124 of 2018 and acquit the appellant.

For Appellant : Mr.R.Ponkarthikeyan

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor



WEB COPY



Crl.A(MD)No.156 of 2023

JUDGMENT

**(Judgment of the Court was delivered by
G.K.ILANTHIRAIYAN, J.)**

This appeal has been preferred as against the Judgment passed in S.C.No.124 of 2018 dated 09.01.2023, on the file of the learned II Additional District and Sessions Court, Trichirappalli, thereby convicting the appellant for the offence punishable under Section 302 of I.P.C.

2.The case of the prosecution is that the sisters of the deceased were working in Trichy. The deceased was a painter and after finishing his work, he used to reach Nochiyam at about 09.00 p.m. He would then call to his sisters over phone and they would all go to their village together. While being so, on 04.02.2017 at about 09.30 p.m., the deceased phoned one of his sisters and stated that he would come late, asking her to go home. Prior to the incident, he had seen his cousin sister together with A.1 in the town bus. Therefore,



Crl.A(MD)No.156 of 2023

the cousin sister of the deceased was acquaintance with A.1. The deceased questioned their relationship, which led to a quarrel between them. This was informed by A.1, A.2 and A.3.

3.While being so, on 04.02.2017 at about 09.00 p.m., all three accused had purchased liquor and were sitting on the bridge leading to the Kollidam river bund near Pillaiyar Temple. At about 09.30 p.m., the deceased arrived there. The accused took advantage of the situation, invited the deceased to consume alcohol, and dragged him to the area opposite the burial ground, where they sat on the cement wall and talked. While being so, A.2 questioned the deceased as to why A.1 was not allowed to love his cousin sister. A wordy quarrel ensued and as the deceased was about to stand, A.2 caught him, causing him to fall. Thereafter, A.1 and A.3 assaulted the deceased with their hands. Subsequently, A.1 broke a beer bottle and assaulted the deceased on his neck, causing grievous injuries, which resulted in his death.



Crl.A(MD)No.156 of 2023

WEB COPY

4.On the complaint, the respondent registered the F.I.R in Crime No.59 of 2017 for the offence punishable under Section 302 read with 34 of I.P.C. After completion of investigation, a final report was filed and the same has been taken cognizance by the trial Court.

5.In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.17 and marked Ex.P.1 to Ex.P.27. The prosecution produced Material Objects M.O.1 to M.O.11. On the side of the accused, no witnesses were examined and no documents were produced before the trial Court.

6.On perusal of oral and documentary evidence, the Trial Court acquitted A.2 and A.3 and found A.1 guilty for the offence punishable under Section 302 of I.P.C. He was sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/-. Aggrieved by the same, A.1 as appellant has preferred the present appeal.



Crl.A(MD)No.156 of 2023

WEB COPY

7.The learned counsel appearing for the appellant submitted that this is a case based on circumstantial evidence and there are no eye witnesses. The prosecution failed to prove the chain of circumstances connecting the accused to the crime. The alleged occurrence took place on 04.02.2017, but the complaint was lodged only on 05.02.2017. After the registration of F.I.R, the respondent went to the scene of crime. However, P.W.1 deposed that police personnel were already present at the scene of crime, when P.W.1 arrived.

8.There is no direct evidence against the accused and the conviction by the Trial Court was based solely on the motive and last seen theory. The so-called P.W.3 and P.W.4 did not even support the case of the prosecution to prove the motive behind the crime. Therefore, the prosecution miserably failed to prove the motive and the last seen theory and even then the Trial Court mechanically convicted the accused.



Crl.A(MD)No.156 of 2023

WEB COPY

9.The learned counsel appearing for the appellant further submitted that in order to prove the last seen theory, the prosecution had examined P.W.3 and P.W.4 and both did not know A.1. Even then, the prosecution failed to conduct a test identification parade to identify the accused.

10.Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that though P.W.4 turned hostile, he had lastly seen A.1 with the deceased and thereby proved the last seen theory. Therefore, both P.W.3 and P.W.4 had lastly seen A.1 with the deceased and were able to identify him. Hence, there was no need to conduct a test identification parade. Further, in order to prove the motive, the prosecution had examined P.W.8 and P.W.9. As such, the prosecution proved the charge beyond any doubt and the Trial Court rightly convicted the appellant.



Crl.A(MD)No.156 of 2023

WEB COPY

11.Heard the learned counsel appearing on either side and perused the materials available on record.

12.This is a case of circumstantial evidence. The prosecution mainly relied on P.W.3 and P.W.4 to establish the last seen theory.

13.P.W.3 deposed that one day he saw the accused along with the deceased at about 09.00 p.m. He questioned them about where they were going, and they replied that they were going to consume alcohol near the Kollidam river bund. The next day, he heard that the deceased had been murdered.

14.P.W.4 deposed that, four years prior to giving his evidence, he had seen A.1 along with other two accused and the deceased while they were going to consume liquor. They were also carrying liquor bottles in their hands. However, he did not know



Crl.A(MD)No.156 of 2023

what happened at the relevant point of time. Later, he heard that the deceased had been murdered. None of the witnesses could state the exact date on which they saw the accused. In fact, P.W.3 did not know the accused. Though P.W.4 could identify A.1, he did not know the identities of the others. Moreover, he turned hostile and did not support the case of the prosecution, while P.W.3 could not identify any of the accused persons. Therefore, the respondent ought to have conducted a test identification parade to properly identify the accused. Admittedly, in this case the respondent did not conduct any test identification parade.

15. In this regard, it is relevant to rely upon the Judgment of the Hon'ble Supreme Court of India in the case of ***Dharmendra Kumar alias Dhamma Vs. State of Madhya Pradesh [2024 (8) SCC 60]***, in which it was held as follows:



Crl.A(MD)No.156 of 2023

WEB COPY

“47. It is trite law that identification tests (TIP) do not serve as substantive evidence but are primarily intended to assist the investigating agency in ensuring that their progress in investigating the offence is on the correct path. Holding a TIP is not obligatory. Further, a failure to hold TIP cannot be a ground to eschew the testimony of witnesses whose evidence was concurrently accepted by the trial and appellate courts. Additionally, a failure to hold a parade would not make inadmissible the evidence of identification in the court.”

16. On a keen reading of the above passage, it can be concluded that failure to hold test identification parade cannot be obligatory only when the testimony of the witnesses irrefutably points to the guilt of the deceased but in the case on hand, the prosecution failed to identify the accused in the manner known to law. Further statements were recorded from P.W.3 and P.W.4 on 05.02.2017. On perusal of both the initial and subsequent statements recorded under Section 161 of Cr.P.C., they developed their



Crl.A(MD)No.156 of 2023

statements by implicating the names of the accused. Admittedly, no test identification parade was conducted. Moreover, P.W.3 and P.W. 4 did not provide any information about the scene of crime. Therefore, there is no piece of evidence to show how the respondent fixed the accused in this crime, particularly when the prosecution failed to establish the last seen theory and the identify of the accused.

17.In order to establish the motive behind the crime, the prosecution examined P.W.8 and P.W.9. P.W.8, the cousin sister of the deceased, knew A.1. While being so, A.1 allegedly fell in love with her and the deceased warned A.1 not to speak to her, leading to an altercation between them on 26.01.2017. On that day, A.1 allegedly threatened the deceased. P.W.9 corroborated the evidence of P.W.8.



Crl.A(MD)No.156 of 2023

WEB COPY

18. Based on this, the prosecution projected the motive that the cousin sister of the deceased fell in love with A.1 and the deceased had warned him. However, their statements were recorded after the accused were arrested on 05.02.2017. It appears that P.W.8 and P.W.9 were planted to establish the motive.

19. Further, the respondent recovered a blood stained jeans and a half sleeve shirt from the accused. Both were sent for forensic analysis. However, the serology report was not marked before the Trial Court to prove that the blood stains in the clothes matched the deceased's blood group. Except the half sleeve shirt and jeans pant, nothing else was recovered from the accused. Therefore, the prosecution miserably failed to prove the charges. In the case of circumstantial evidence, the prosecution must necessarily prove the chain of circumstances connecting the accused to the crime.



Crl.A(MD)No.156 of 2023

WEB COPY

20.The Hon'ble Supreme Court in the case “***State of Goa Vs. Pandurang Mohite, AIR 2009 SC 1066***” and a plethora of other judgements has stated that the time gap between last seen alive and the recovery of dead body must be so small that the possibility of any person other than the accused being the author of the crime becomes impossible.

21.In this regard, it is also relevant to rely upon the Judgment of the Hon'ble Supreme Court of India in the case of “***Arjun Marik v. State of Bihar***” [1994 Supp (2) SCC 372], wherein the Hon'ble Supreme Court of India held as follows:

“31.Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is



Crl.A(MD)No.156 of 2023

consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.”

22.However, in the case on hand, it is admitted that the prosecution has miserably failed to establish the chain of circumstances linking the accused to the crime.

23.In view of the above, the conviction and sentence imposed on the appellant in S.C.No.124 of 2018 dated 09.01.2023, on the file of the learned II Additional District and Sessions Court, Trichirappalli, cannot be sustained and are liable to be set aside.

24.In the result, this Criminal Appeal is allowed and the Judgment made in S.C.No.124 of 2018 dated 09.01.2023, on the file of the learned II Additional District and Sessions Court, Trichirappalli, is hereby set aside. The appellant is acquitted of all the charges. The bail bond, if any, executed by the appellant shall



Crl.A(MD)No.156 of 2023

WEB COPY

stand cancelled. The fine amount, if any paid, shall be refunded to the appellant. The appellant shall be set at liberty forthwith, if he is no longer required in connection with any other case.

**[G.K.I.J.] & [R.P.J.,]
12.02.2026**

NCC : Yes/No
Index : Yes/No
ps

To

1.The II Additional District and Sessions Court,
Trichirappalli.

2.The Inspector of Police,
Manachanallur Police Station,
Trichy District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

14/15



WEB COPY



Crl.A(MD)No.156 of 2023

G.K. ILANTHIRAIYAN, J.
AND
R. POORNIMA, J.

ps

Crl.A(MD)No.156 of 2023

12.02.2026