

Crl. A(MD)No.638 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 10.03.2026

CORAM:

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
AND
THE HONOURABLE MR.JUSTICE P.DHANABAL**

Crl. A(MD)No.638 of 2023

M.Senthilmurugan

: Appellant(s)

Vs.

**The Inspector of Police,
Sattur Town Police Station,
Crime No.678/2017.**

: Respondent(s)

PRAYER: Criminal Appeal is filed under Section 372 of the Code of Criminal Procedure, against the judgment dated 21.02.2023 in S.C.No. 119 of 2018, for the offence under Section 302 of IPC to undergo the Imprisonment of Life and to pay a fine of Rs.5,000/- in default to undergo 6 months rigorous imprisonment, on the file of the learned Sessions Judge, Mahalir Neethimandram, Fastrack Court, Srivilliputhur in Virudhunagar District and allow this criminal appeal.

For Appellant

: Mr.G.Karuppasamypandiyan

For Respondent

**: Mr.A.Thiruvadi Kumar
Additional Public Prosecutor**



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J U D G M E N T

**(Judgment of the Court was
delivered by N.ANAND VENKATESH, J)**

The sole accused assails the judgment of the the learned Sessions Judge, Mahalir Neethimandram, Fast Track Court, Srivilliputhur in Virudhunagar District made in S.C.No.119 of 2018 dated 21.02.2023, wherein the appellant was convicted for offence under Section 302 of IPC and sentenced to undergo life imprisonment and to pay a fine amount of Rs.5,000/-, in default to undergo six months rigorous imprisonment.

2. The case of the prosecution is that the appellant and the deceased were married in April 2011 and they were blessed with children. While the accused person was working at Hosur, he sustained serious injuries which resulted in a left femur fracture and as a result, he was not able to continue to go for work. The further case of the prosecution is that he was addicted to alcohol and he was not going to work and hence developed frequent quarrels with the deceased and the relationship was getting strained. On 20.11.2017 at about 3:45 PM, the



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accused person is said to have got into the kitchen and slammed the door of the kitchen room and tied the neck of the deceased with a towel and strangled her. Thereafter, the accused person is said to have hit the deceased with the blunt part of a cutting tool used in the kitchen (MO3). The deceased died due to cardio-respiratory arrest.

3. PW1, who is the brother of the deceased, lodged a complaint before PW13 and based on the same, the FIR (Exhibit P12) came to be registered in Crime No.678 of 2017 for offence under Section 302 IPC.

4. PW14, who is the Investigation Officer, took up the investigation and on the same day visited the scene of occurrence at about 20:00 hours and prepared the Observation Mahazar (Ex.P5) and the Rough Sketch (Ex.P14) in the presence of witnesses. He also seized MO5 to MO8 under Ex.P16.

5. The accused person was arrested in the course of investigation on 21.11.2017. Based on his confession, MO1 and MO3 were recovered.



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6. The dead body was sent to the hospital and the postmortem was conducted by PW10 and the postmortem certificate was marked as Ex.P9. The following injuries were recorded:

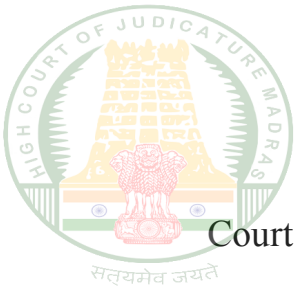
“PM Summary: Rigor mortis seen on all four limbs.

External examination: Dried blood seen coming out of both nostril. Reddish black dry lesion located in front of the neck 6 cm below the chin, 8 cm below the left angle of mandible, 7 cm below the right angle of mandible, length is about 23 cm from left to right – breadth 2.5 cm. Margin of the injury is serrated with multiple bleeding points.

Internal examination: Haemorrhage was seen all planes of soft tissue. I am of opinion that from skin, subcutaneous tissue, strap muscle, whole larynx congested. Arytenoid cartilage congested.”

7. A final opinion was given to the effect that the deceased would appear to have died of cardio-respiratory arrest due to mechanical asphyxia because of strangulation.

8. The Investigation Officer, recorded the statements of witnesses under Section 161 Cr.P.C., and collected all the relevant materials and on completion of investigation, filed the police report before the concerned



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Court and after serving the copies of the documents under Section 207 of Cr.P.C., the Court below took the case on file in S.C.No.119 of 2018.

9. The trial court framed charges for offence under Section 302 of IPC and the accused person denied the charges.

10. The prosecution examined PW1 to PW14 and marked Exhibits P1 to P20 and also relied upon MO1 to MO8.

11. The incriminating circumstances and evidence was put to the accused person when he was questioned under Section 313 of Cr.P.C., and he denied the same as false.

12. The accused person did not examine any witness nor relied upon any document.

13. The trial court, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to the conclusion that the prosecution has proved the case beyond reasonable doubt and accordingly convicted and sentenced the accused



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person in the manner stated supra. Aggrieved by the same, the present Criminal Appeal has been filed before this Court.

14. This Court has carefully considered the submissions made on either side and the materials available on record.

15. The main ground urged by the learned counsel for the appellant is that there is absolutely no evidence to establish that the appellant had committed the crime and that the trial court had rendered findings on surmises and by mainly relying upon the recovery of MO1 and MO3 under Section 27 of the Indian Evidence Act, 1872.

16. PW1, is the brother of the deceased. He has stated that the accused person is a drunkard and he was always treating the deceased with cruelty. On 20.11.2017 at about 4:00 PM, he received a message from PW4 to the effect that the deceased had fallen down after she was attacked by the accused person. Even in the evidence, he specifically states that PW4 came to know about the incident only through one Kavin Prasad, who is the son of the deceased and the accused.



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17. PW2 and PW3 are the father and mother of the deceased. They also talk about the strained relationship between the deceased and the accused. Insofar as the incident is concerned, they had come to know about the incident only after they were informed by PW1.

18. PW4, is the brother of the accused person. He turned hostile and therefore nothing comes out of his evidence.

19. PW5, is the neighbour, who also turned hostile and nothing comes out of the evidence of PW5.

20. The other important witness is PW12, who is the Revenue Divisional Officer, who conducted the inquiry since the death had taken place within seven years from the date of marriage. He has submitted the report marked as Ex.P11. He has come to the conclusion that there was no dowry demand and it is not a case of dowry death. On carefully going through the report of PW12, it is seen that PW4, who was inquired by PW12, has informed that he came to know about the incident only when it was informed by Kavın Prasad.



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21. This is a case where the prosecution is trying to establish their case through circumstantial evidence. Broadly, the circumstances that were projected are motive, recovery of MO1 and MO3, conduct of the deceased after the incident and medical evidence. It is quite surprising that the prosecution has not even chosen to examine Kavın Prasad, who is the son of the deceased and the accused, who is said to have witnessed this incident or at least saw the accused person in the place of incident. It is clear from the evidence that he was the one who is said to have informed PW4 after the incident and PW4 in turn had informed PW1. If this small boy had been called as a witness and examined, the entire truth would have come out and probably it would have made the task of the prosecution more easier to prove the case against the accused person. The Investigation Officer has not cared to record the statement of the boy during the investigation nor has included the boy as one of the witnesses in the list of witnesses nor has taken steps to examine the boy as a witness before the Court. This is a very serious lapse on the part of the Investigation Officer.

22. The prosecution has not even chosen to establish the last seen theory by examining witnesses who can speak about the availability of



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the accused person in the same house where the deceased was found dead. If Kavin Prasad had been examined as a witness, the last seen theory could also have been established. In such event, the burden will be upon the accused person to explain as to what really happened inside the house failing which, adverse inference can be gathered under Section 106 of the Indian Evidence Act.

23. In the considered view of this Court, the last seen theory is one of the most important link in this case. There is no witness who speaks about the fact that the accused person was available inside the house before or at the time of the occurrence. If that is so, in the absence of examining Kavin Prasad, there is no material to link the accused person to the incident. Just because the accused person and the deceased had a strained relationship and the accused person was a drunkard, that cannot lead to a presumption that it is only the accused person who could have committed the offence.

24. In a case of circumstantial evidence, it is the prosecution which has to prove each circumstance that forms a chain so as to completely exclude every hypothesis other than the guilt of the accused. Useful



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reference can be made to the judgement of the Apex Court in *Baiju Kumar Soni and Another v. State of Jharkhand*, reported in 2019 (3) **MLJ (Crl) 585**.

25. The trial court unfortunately was swayed by the strained relationship between the accused and the deceased and the so-called recovery of MO1 and MO3 and the trial court proceeded to convict the appellant. It is now too well settled that even a strong suspicion is not enough to convict a person and the prosecution has to necessarily prove each circumstance in the chain beyond reasonable doubt. In other words, a strong suspicion cannot be a substitute for proving the case beyond reasonable doubts by the prosecution.

26. In the case on hand, the chain of circumstances got snapped when the prosecution failed to examine even a single witness to substantiate the last seen theory and committed the fatal mistake of not examining Kavin Prasad, who is one of the most important witness, who could have spoken about the incident. This serious lapse on the part of the Investigation Officer has to be necessarily condemned by this Court.



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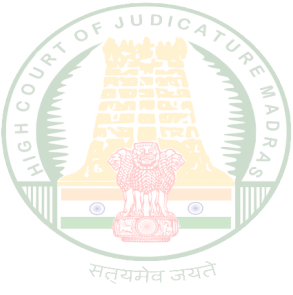
27. In a case involving circumstantial evidence, when two views are possible, the accused will also be entitled for benefit of doubt on the one which is favourable to him.

28. The upshot of the above discussion leads to the only conclusion that the prosecution has failed to prove the case against the accused person beyond reasonable doubt and therefore, this Court has to necessarily interfere with the judgement passed in S.C.No.119 of 2018 dated 21.02.2023, and the same is hereby set aside.

29. In the result, this Criminal Appeal is allowed and the appellant is acquitted from all charges and set at liberty.

[N.A.V., J.] [P.D.B., J.]
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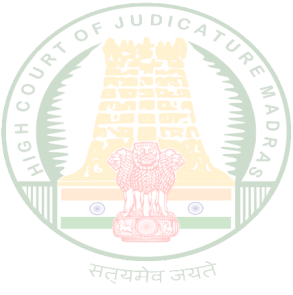
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- 2.The The Inspector of Police,
Sattur Town Police Station.
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.



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