

Crl.A.(MD).No.886 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	28.04.2026
Pronounced On	:	01.06.2026

CORAM

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

Crl.A.(MD).No.886 of 2023

Senthilkumar

... Appellant

Vs.

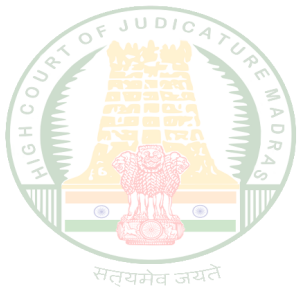
The Inspector of Police,
Thanjavur Town East Police Station,
Thanjavur,
Thanjavur District.
Crime No.14 of 2016

... Respondent

PRAYER : Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code to call for the records and set aside the judgment and conviction dated 12.07.2022 passed by the learned II Additional District and Sessions Judge, Thanjavur in S.C.No.225 of 2016 and acquit the appellant.

For Appellant : Mr.M.Karunanithi for
Mr.S.Mahendrapathy

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



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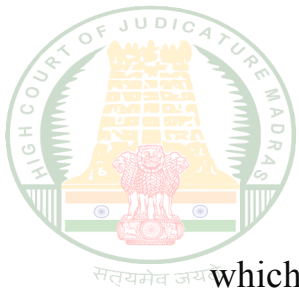
JUDGMENT

(Judgment of the Court was made by **K.K.RAMAKRISHNAN,J.**)

The appellant/accused in Sessions Case No. 225 of 2016 has preferred the present appeal challenging the judgment of conviction and sentence dated 12.07.2022, whereby the learned Sessions Judge convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life, along with a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for a period of six months.

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

The prosecution case is that the deceased was employed as an Assistant Administrative Officer in the LIC Office at Thanjavur. He was residing in the first floor of a building, while the accused and his wife were residing in the ground floor of the same premises. The accused got to know of the amorous looks exchanged between his wife and the deceased and believed that they were enamoured of each other and consequently, he suspected that they were having a relationship. On 20.12.2016 at about 7:30 a.m., the accused is alleged to have picked up a quarrel with the deceased,



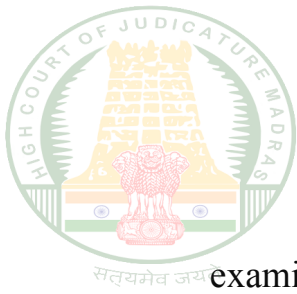
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which escalated, culminating in the commission of murder of the deceased.

Thereafter, the accused allegedly locked the premises and absconded. The altercation is stated to have been witnessed by P.W.1, who was also working in the same LIC office. When the deceased did not report for duty, P.W.1 went in search of him, proceeded to the residence, and found the deceased lying murdered. He thereafter informed the higher officials and lodged a complaint with the jurisdictional police. On receipt of the complaint, the Sub-Inspector of Police registered a case under Section 174 Cr.P.C. and forwarded the First Information Report to the Court as well as to the Inspector of Police for investigation. The Investigating Officer visited the place of occurrence, prepared the observation mahazar and rough sketch, and conducted inquest over the body in the presence of panchayatdars. The body was thereafter sent for post-mortem examination.

2.1.During the course of investigation, on 21.12.2016 at about 8:00 p.m., the accused was arrested. In the presence of witnesses, he is stated to have given a voluntary confession, pursuant to which blood-stained clothes (shirt and pant) were recovered. The Investigating Officer

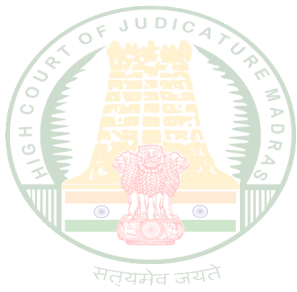


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examined several witnesses, collected documentary evidence, obtained the post-mortem report and viscera report, and, upon completion of investigation, filed the final report before the learned Judicial Magistrate No. I, Thanjavur. The case was taken on file in P.R.C. No. 7 of 2016. After furnishing copies under Section 207 Cr.P.C., the case was committed to the Court of Sessions, as the offence was exclusively triable by the Sessions Court.

2.2.The learned Sessions Judge took the case on file as S.C.No. 225 of 2016, framed charges against the accused, and upon the accused pleading not guilty, proceeded with the trial. The prosecution examined P.W. 1 to P.W.20, marked Ex.P1 to Ex.P13, and produced Material Objects M.O.1 to M.O.15.Upon questioning under Section 313 Cr.P.C. with regard to the incriminating circumstances appearing against them, the accused denied the same as false. Neither witness has been examined on the side of the accused nor any document has been marked on the side of the accused as a defence side.



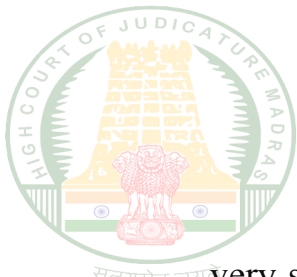
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2.3. Upon appreciation of the oral and documentary evidence, the trial court found the accused guilty and convicted and sentenced him as stated above. Aggrieved by the said conviction and sentence, the present appeal has been filed.

3.Submissions of the learned counsel appearing for the Appellant/Accused:

The learned counsel for the appellant would contend that the entire prosecution case rests solely on circumstantial evidence, and that the chain of circumstances is incomplete and do not form a complete chain and insufficient to sustain a conviction under Section 302 IPC.

3.1. It is submitted that the alleged motive—namely, suspicion entertained by the accused regarding the relationship of his wife with the deceased—has not been satisfactorily established. Further, the prosecution has failed to prove a foundational fact, viz., that the accused was residing in the apartment situated at Thanjavur G.A. Canal Road, belonging to P.W.16 (Kannan). In the absence of proof of residence or exclusive possession, the



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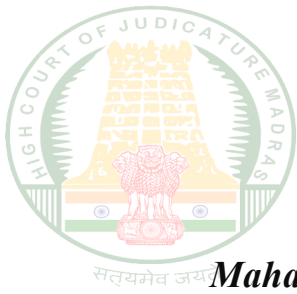
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very substratum of the prosecution case stands weakened. The learned trial Judge, it is argued, failed to properly appreciate this crucial aspect.

3.2.The only circumstance relied upon by the prosecution is the alleged altercation between the accused and the deceased, said to have been witnessed by P.W.1. Beyond this, no other incriminating circumstance has been firmly established. In particular, there is no cogent evidence to establish the “last seen together” theory so as to form a proximate link between seeing the accused and the time of death.

3.3.The learned counsel further submits that invoking of Section 106 of the Indian Evidence Act is legally untenable in the absence of proof of foundational facts. It is a settled principle that the burden under Section 106 does not relieve the prosecution of its primary obligation to establish the case beyond reasonable doubt.

3.4.Reliance is placed upon the principles laid down by the Hon’ble Supreme Court in *Sharad Birdhichand Sarda v. State of*

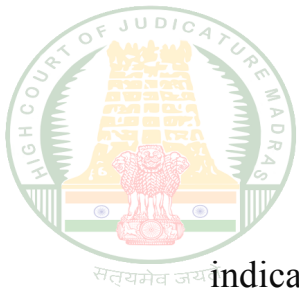


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Maharashtra, wherein it was held that in a case based on circumstantial evidence, each circumstance must be fully established, and all such circumstances must form a complete chain pointing unerringly towards the guilt of the accused.

3.5.It is further contended that the trial court itself, in paragraph No. 37 of the judgment, has recorded a finding that there is no direct evidence to prove that the accused caused the fatal injury (allegedly by hitting the deceased with a pipe). Despite such a finding, the trial court proceeded to convict the accused without proper analysis of the deficiencies in evidence.

3.6.With regard to the alleged recovery, it is argued that the recovery of blood-stained clothes is highly doubtful. According to the prosecution, the recovery was made pursuant to the arrest; however, evidence suggests that the accused was already present in the police station prior to the alleged formal arrest. The recovery of the key from the accused, which was used to open the premises where the body was found, further



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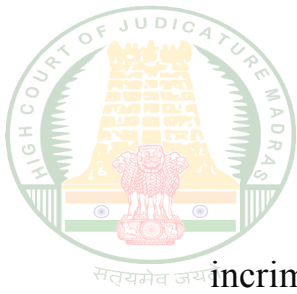
indicates prior custody and casts serious doubt on the genuineness of the recovery proceedings.

3.7. In such circumstances, it is submitted that none of the circumstances relied upon by the prosecution have been proved in conformity with the settled legal principles governing circumstantial evidence. Hence, the appellant is entitled to acquittal.

4. Submissions of the learned Additional Public Prosecutor appearing for the State:

Per contra, the learned Public Prosecutor would submit that the deceased was found murdered inside the premises linked to the accused, and therefore, the burden lies upon the accused to explain the circumstances under Section 106 of the Indian Evidence Act.

4.1. It is further contended that the evidence of P.W.1 clearly establishes that the accused and the deceased were last seen together shortly before the occurrence. This circumstance, coupled with the recovery of



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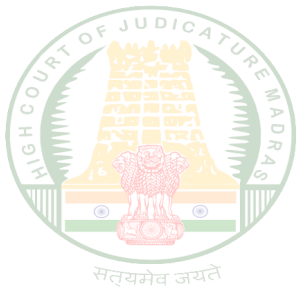
incriminating material and the conduct of the accused, forms a complete chain pointing towards his guilt.

4.2. According to the prosecution, the trial court has correctly appreciated the evidence on record, and the cumulative effect of the circumstances clearly establishes the guilt of the accused beyond reasonable doubt. Therefore, it is prayed that the conviction and sentence imposed by the trial court be confirmed.

5. This Court considered the rival submissions made by the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record and the precedents relied upon by them.

6. The question that arises in this case is:

i) Whether the prosecution proved the case beyond reasonable doubt against the appellant and consequently conviction and sentence passed against the appellant in S.C.No.225 of 2016 can be sustained?



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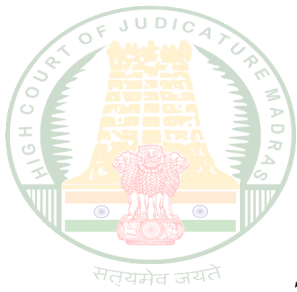
7.This case rests entirely on circumstantial evidence. The Hon'ble three judges Bench of the Hon'ble Supreme Court in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116*** in paragraph no.153 set out five golden principles, namely the panchsheel of the proof of a case based on circumstantial evidence and the same is as follows:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

*7.3.1. 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 the case of ***Shivaji Sahabrao Bobade v. State of Maharashtra*** reported in ***(1973) 2 SCC 793***, which reads as follows:*

“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.”

7.3.2. the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to



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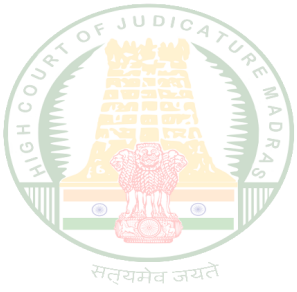
say, they should not be explainable on any other hypothesis except that the accused is guilty,

7.3.3. the circumstances should be of a conclusive nature and tendency,

7.3.4. they should exclude every possible hypothesis except the one to be proved, and

7.3.5. 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.Now the question is whether the prosecution proved the case against the appellant on the basis of the circumstantial evidence in conformity with the above settled principles? In the present case, the prosecution mainly relied upon two circumstances to establish the guilt of the accused, namely: (i) P.W.1 had seen the accused and the deceased at the residence of the accused, allegedly situated on G.A. Canal Road, Thanjavur, belonging to P.W.16 and managed by P.W.2, prior to the death of the deceased; and (ii) the recovery of the blood-stained clothes of the accused.



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9. According to the prosecution, the accused and the deceased were residing in an apartment situated at G.A. Canal Road, Thanjavur, belonging to P.W.16, namely Kannan. It is the further case of the prosecution that the accused was residing in the said premises along with his wife (P.W.7). P.W.2 is stated to be the person managing the said apartment on behalf of P.W.16, who was employed elsewhere. The prosecution also examined neighbours, namely P.Ws.3, 4, and 5, to establish that the accused was residing in the said apartment.

10.However, the documentary evidence produced by the prosecution, namely Exs.P6 and P7, indicates that the accused was residing at a different place. P.W.7, the wife of the accused, as well as another prosecution witness P.W.8, have deposed that the accused and P.W.7 were residing at Tirukattupalli. This specific version is supported by the documentary evidence produced by the prosecution.

11.Thus, there exists two inconsistent versions regarding the place of residence of the accused. While the oral evidence of P.Ws.1, 2 and other

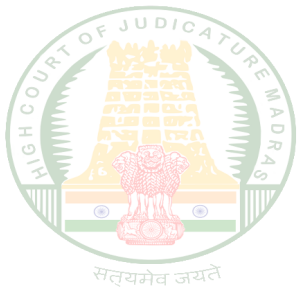


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witnesses suggests that the accused was residing in the apartment belonging to P.W.16, the documentary evidence and the testimony of P.W.7 indicate otherwise. The investigating agency has not produced any document to show that the accused was a tenant under P.W.16 or that he was in occupation of the said premises.

12. When the prosecution evidence itself is bristled with contradictions on a material fact, namely the place of residence of the accused, the benefit of doubt must necessarily be extended to the accused. In the present case, it has not been proved in accordance with law that the accused was residing in the apartment where the dead body of the deceased was allegedly found.

13. With regard to the evidence of P.W.1, it is stated that he had seen the accused and the deceased together and that the accused scolded the deceased on suspicion of an alleged relationship with his wife. However, this evidence is not corroborated by any other witness.

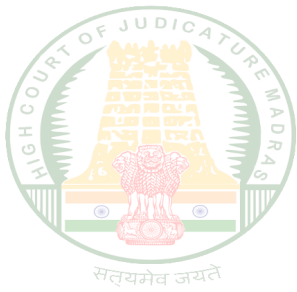


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14.This being a case of circumstantial evidence, the motive assumes importance. The prosecution alleges that the accused suspected the fidelity of his wife. However, P.W.7 has categorically stated that no such incident occurred and that she was not in relationship with the deceased. She has further deposed that they were residing at a different place, far away from the place of occurrence.

15. Even P.W.1, in his chief examination, has not clearly deposed that the accused scolded the deceased on account of any alleged relationship with his wife. Therefore, this Court finds that the motive for the occurrence has not been proved.

16. Further, the evidence of P.W.1 that the accused and the deceased were last seen together is not reliable. According to P.W.1, after witnessing the alleged altercation, he proceeded to his office. Thereafter, finding that the office key was with the deceased, he returned to the house and found the deceased lying dead in the alleged residence of the accused.



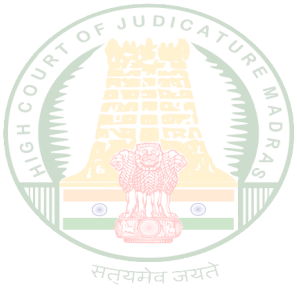
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17.This version appears highly improbable. There is no corroborative material to substantiate the claim that the accused had any altercation with the deceased at the relevant point of time.

18.Even otherwise, the mere fact that the accused was allegedly last seen with the deceased cannot, by itself, form the basis for conviction. The prosecution must establish other incriminating circumstances forming a complete chain. In the present case, such complete chain has not been established. Further, none of the witnesses have spoken that the wife of the accused and the deceased were fond of each other. In these circumstances, this Court finds that the prosecution has failed to prove the charge against the accused beyond reasonable doubt.

19.Apart from the above, as rightly pointed out by the learned counsel for the appellant, the learned trial Judge, in paragraph No. 37 of the judgment, has stated that the prosecution has not proved that the accused assaulted the deceased with an iron rod and that such allegation is based only on the alleged confession.



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20.The said finding of the trial court is perverse for more than one reason. While observing that the motive has not been proved, the trial court has nevertheless relied upon the alleged confession without independent corroboration.

21.The learned Trial Judge has relied upon the alleged confession of the accused. It is seen that only the admissible portion of the confession has been marked, while the remaining portion has not been exhibited. In such circumstances, the Trial Court ought not to have taken a clue from the confession.

22.The learned Trial Judge has also recorded a finding that the dead body was found in the residence of the accused. In this context, this Court is constrained to examine the applicability of Section 106 of the Indian Evidence Act. It is well settled that before drawing any adverse inference against the accused under Section 106 of the Evidence Act, the prosecution must first establish foundational facts pointing towards the guilt of the accused. Mere recovery of the dead body from a place alleged to be



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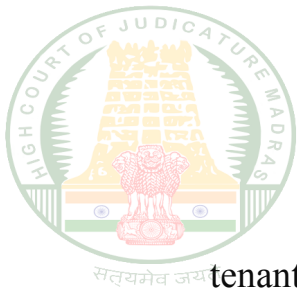
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the residence of the accused, in the absence of proof that the accused was in exclusive possession of the premises or was present at the relevant point of time, cannot give rise to any presumption against him.

23.In the present case, there is no reliable evidence to establish that the accused was present at the scene of occurrence at or about the time of the incident. On the contrary, several prosecution witnesses have categorically stated that the accused was not residing in the said apartment.

24.Thus, two sets of evidence emerge from the prosecution case itself regarding the residence of the accused. When such material contradictions exist on a fundamental aspect, the benefit of doubt must necessarily be extended to the accused.

25.This Court, therefore, finds that the prosecution has failed to prove that the accused was residing in the said apartment or that he was present at the place of occurrence at the relevant time. Further, neither P.W.1 nor P.W.16 has produced any document to establish that the accused was a



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tenant under P.W.16. There is also no evidence to show that P.W.2, who allegedly managed the property, collected rent from the accused and remitted the same to P.W.16. In the absence of any such evidence, this Court is unable to concur with the findings of the learned Trial Judge in convicting the accused.

26. Accordingly, this Criminal Appeal is allowed on the following terms:

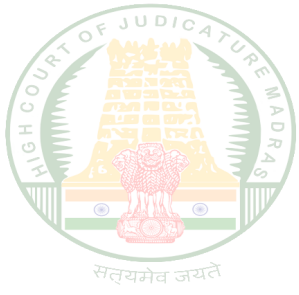
26.1. The conviction and sentence imposed on the accused in S.C.No.225 of 2016 by the learned II Additional District and Sessions Judge, Thanjavur, dated 12.07.2022 is hereby set aside.

26.2. The accused is acquitted of all charges.

26.3. The accused shall be set at liberty forthwith, unless his custody is required in connection with any other case.

[N.A.V, J.] & [K.K.R.K,J.]
01.06.2026

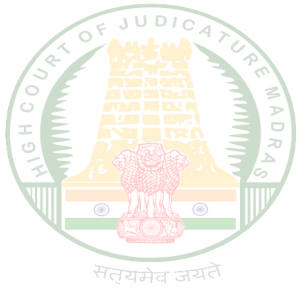
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- 1.The II Additional District and Sessions Court,
Thanjavur.
- 2.The Inspector of Police,
Thanjavur Town East Police Station,
Thanjavur,
Thanjavur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer
Criminal Section (Records)
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH, J.
and
K.K.RAMAKRISHNAN, J.

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Pre-delivery judgment made in
Crl.A.(MD).No.886 of 2023

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