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**(2014) 07 MAD CK 0050**  
**In the Madras High Court**  
**Case No : Criminal Appeal No. 863 of 2012**

Govindasamy

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision :** 04-07-2014

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313  
Penal Code, 1860 (IPC) — Section 302

**Citation :** (2014) 3 MLJ(Cri) 745

**Hon'ble Judges :** V. Dhanapalan, J;R. Karuppihah, J

**Bench :** Division Bench

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## Judgement

R. Karuppihah, J.—The appellant was tried as a sole accused by the Principal Sessions Judge in S.C.No. 81 of 2011 for the offence under Section 302 I.P.C. and in the judgment dated 31.10.2012, the Principal Sessions Judge found the appellant guilty and convicted under Section 302 IPC and sentenced the appellant to undergo Imprisonment for Life and also to pay a fine of Rs. 1,000/- in default to undergo Simple Imprisonment for three months. Challenging the above said judgment of the Principal Sessions Judge, the Appellant has preferred this appeal.

2. Briefly the case of the prosecution as per the charge sheet filed by the Investigating Officer is that the Appellant is the husband of the deceased Sarasu and they are having a son namely, Kumaravel, who is settled at Bangalore. The Appellant also married one Ellammal as second wife and begot two female children and both wives Sarasu and Ellammal were living separately in the house of the Appellant. The first wife Sarasu had often quarrelled with the Appellant demanding the transfer of the land in her name. Panchayat was also convened regarding the dispute between the Appellant and the said Sarasu. On 09.09.2010, at 6.00 P.M., there was a dispute between the Appellant and Sarasu with regard to the land transfer. On 10.09.2010 at about 03.30 a.m., due to the above said land dispute, the Appellant, with an intention to cause the death of Sarasu, has voluntarily and brutally attacked Sarasu, with hacksaw blade and

Akkuaruval on her neck, throat, head, jaw and shoulder and caused the death of Sarasu and hence, the Appellant committed the offence punishable under Section 302 IPC.

3. The Principal Sessions Judge found that the prima facie case was made out and framed a charge under Section 302 IPC. But, the appellant denied the charge as false and also claimed for trial.

4. Before the Sessions Court, on the side of the prosecution, 16 witnesses were examined as P.Ws.1 to 16 and marked 22 documents as Exs.P1 to P22. The prosecution also marked 16 material objects as M.Os.1 to 16 to prove the case of the prosecution.

5. P.W.1 namely, Malliga, the sister of the deceased Sarasu has deposed about the motive for the occurrence. She has seen the deceased and the appellant together on previous day night. She has also deposed that she had seen the appellant with weapon, immediately after the occurrence. P.W.2-Venkatachalam, the brother of the deceased, P.W.3-Kutty @ Madhavan, the neighbour of the appellant, P.W.4-Chinnasamy, the sister's son of the deceased, P.W.6-Venkatesan, the Ex-President of Panchayat, P.W.7 Kumaravel, the son of the deceased, P.W.8-Munusamy, the brother of the appellant and P.W.9-Vijaya, the neighbour of the house have deposed about the alleged motive for the occurrence. P.W.5, namely, Vijayakumar, who was examined as attesting witness in Ex.P2-Observation Mahazar and Ex.P3-Recovery Mahazar for recovery of the M.O.2-Hacksaw Blade, M.O.3-Blood stained soil and M.O.4-Sample soil. P.W.10-Mahendiran, the photographer, who took the photos M.O.5(series) was examined. P.W.11-Madhaiyan, the Village Administrative Officer, has deposed as attesting witness in the confession statement given by the appellant and on the basis of the admissible portion-Ex.P5, P.W.10-Inspector of Police recovered M.O.1-Akkuaruval, M.O.7-blood stained banian and M.O.8-blood stained lungi under Ex.P4-Recovery Mahazar. P.W.12-Dr.N.Elavarasi has deposed about the post-mortem conducted on the body of the deceased and issued Ex.P7-post-mortem certificate. P.W.13 Kumaravel, Head constable, has deposed about handing over the body for post-mortem and after post-mortem, recovered M.O.Nos.9 to 15 from the body of the deceased and handed over to the police station. P.W.14-G.Sriramulu, who is the Sub-Inspector of Police has deposed about recording of Ex.P1-complaint and registration of First Information Report Ex.P9 and sending it to the Magistrate Court and the Investigating Officer. PW15-Kabilan, Investigating Officer, has deposed about preliminary investigation conducted from 10.09.2010 to 12.09.2010 and P.W.16-Ashokkumar has deposed about further investigation of the case. P.W.16 filed the final report before the Court on 13.09.2010.

6. The appellant was questioned under Section 313 of Criminal Procedure Code regarding the incriminating circumstances against him by the prosecution witnesses. But the appellant denied the same. Further, the appellant neither examined any witness nor marked any document.

7. Admittedly, there is no eye witness to the occurrence in this case. The learned Sessions Judge has considered the above said oral and documentary evidence adduced on the side of the prosecution and finally, convicted and sentenced the appellant by holding that the prosecution has proved the following circumstances to implicate the appellant in the crime:-

(i)The motive for the occurrence was proved from the evidence of P.W.1 to P.W.4 and P.W.6 to P.W.9.

(ii)P.W.1 has lastly seen the appellant and the deceased together a day before the occurrence in the evening and also witnessed the appellant with weapon the next day morning, i.e. immediately after the occurrence.

(iii)The confession statement was given by the appellant during police custody and recovery of weapons were made is on record from the evidence of P.W.11 and P.W.15-Investigating Officer.

(iv)The appellant has failed to prove the defence version by adducing evidence.

8. Heard Mr.S.Xavier Felix, the learned counsel appearing for the appellant and Mr.M.Maharaja, the learned Additional Public Prosecutor for the respondent.

9. Point for consideration in this appeal is whether the prosecution has proved its case beyond reasonable doubt and the conviction and sentence imposed by the Sessions Judge is correct?

10. The learned counsel appearing for the appellant mainly contended that the Sessions Court has failed to consider the fundamental basic principle of the criminal jurisprudence of criminal trial, in which the accused is presumed to be innocent until proved the guilt beyond reasonable shadow of doubt, and also the Sessions Court has erroneously held that the onus of proof and burden of proof lies on the defence and therefore, the findings of the trial Court are not correct. The learned counsel further pointed out that in the instant case, admittedly, there is no direct eye witness to the occurrence and the prosecution lies only on the circumstantial evidence and as such all the circumstances taken cumulatively, should form a chain so complete that there is no scope to escape from the conclusion that within all the human probability, the crime was committed by the appellant alone and none else. But, the learned counsel submitted that in the instant case, the prosecution has miserably failed to prove any one of the circumstances relied on by the prosecution by adducing reliable evidence and beyond reasonable doubt and hence, prayed to set aside the conviction and sentence imposed by the Sessions Judge.

11. We have heard the learned Additional Public Prosecutor on the above points. He would submit that the prosecution had proved the guilt of the accused through the prosecution witnesses and therefore, this Court shall not interfere in such a considered order.

12. Admittedly, in the instant case, there is no eye witness to prove the

prosecution case. But the prosecution has relied on the circumstantial evidence. In the above said circumstances, the learned counsel appearing for the appellant relied on the unreported judgment of the Division Bench of this Court rendered in Siva @ Sivaraj @ Kurangatti @ Palanichamy v. The State through the Inspector of Police, Nilakottai Police Station, Dindigul District [CDJ 2013 MHC 5063]in CrI.A. (MD) No. 113 of 2012 dated 10.10.2013, wherein it is stated in paragraph No. 25 as under:

25. It is a well settled principle of law that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn, should, in the first instance, be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused and the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis, but the one proposed to be proved and there must be a chain of evidence so far complete from the time of occurrence to the conclusion of the entire investigation and the prosecution is having every burden to prove the guilt and then perhaps the prosecution may raise a point that these are all points which would be minor in nature and such a discrepancy would not vitiate the prosecution case. Therefore, always the Court should have an approach if the evidence of the witness is really in its entirety and the same appears to have in a ring of truth and then, it may become necessary for the Court to scrutinize the evidence, more particularly, keeping in mind the deficiency, the drawback, infirmities pointed out in the said evidence as a whole and evaluate them separately to determine whether the same clearly expressed the nature of evidence provided by all the witnesses.

13. In the instant case, according to the prosecution, the motive for occurrence is that the deceased Sarasu had often quarreled with her husband-appellant demanding the transfer of land in her name and the Panchayat was also convinced, due to the above said dispute between the appellant and the deceased, one month prior to the occurrence. Further on 09.09.2010 at about 6.00 p.m., there was a dispute between the appellant and the deceased with regard to the same land transfer and due to the above said demand from the deceased to transfer the land in her name, the appellant has committed the murder. To prove the above said motive, the prosecution side examined P.W.1 to P.W.4 and P.W.6 to P.W.9 witnesses.

14. A careful perusal of oral evidence of P.W.1 to P.W.4 and P.W.8 and P.W.9 revealed that none of the witness has spoken about the alleged motive that the deceased had often fought with her husband demanding the transfer of land in her name and to that effect, the panchayat was convened. P.W.6-one Venkatesan, Ex-President of Panchayat has deposed that both the wives of appellant frequently had quarrelled with each other and the deceased Sarasu demanded one acre of the appellant's land claiming that the property belongs to her mother-in-law's and therefore, she is entitled to the property. Contrary to the evidence of P.W.6, P.W.7-Kumaravel who is the son of the deceased, has

deposed that the appellant informed him that he is going to execute the sale deed in favour of the children of the second wife and therefore, there was a quarrel between the first wife and the second wife. Further, PW8-Munusamy who is the brother of the appellant has deposed that the property was divided between the appellant and his brother in an oral partition and the property allotted to his father is in his possession alone. Therefore, as rightly pointed out by the learned counsel appearing for the appellant, the oral testimonies of P.W.6 to P.W.8 are completely contrary with each other and also against the case of the prosecution. Further, all other witnesses namely, P.W.1 to P.W.4 and P.W.7 and P.W.8 examined to prove the motive also have not deposed about the alleged motive before the Court as stated in their alleged statements under Section 161 Cr.P.C., given before the Investigating Officer. Therefore, as rightly pointed out by the learned counsel appearing for the appellant, the oral testimonies of P.W.1 to P.W.4 and P.W.6 to P.W.9 are contradictory and also unbelievable. But, the Sessions Court has not at all considered the material contradictions in the oral testimonies of the above said prosecution witnesses and also the documents relied on by the prosecution and therefore, the findings of the Sessions Court as if the motive has been proved beyond reasonable doubt are incorrect. Therefore, the first circumstance i.e. the alleged motive relied on by the prosecution to implicate the appellant in the occurrence is not proved beyond reasonable doubt.

15. The second circumstance put forth by the prosecution is that the deceased and the appellant were last seen together by PW1-Malliga prior to the occurrence i.e. on 09.09.2010 evening at 6.00 p.m. In this regard, the learned counsel appearing for the appellant submitted that the prosecution has examined only P.W.1 to prove the above said circumstance but the oral testimony of P.W.1-Malliga is completely contrary with prosecution case, but, the Sessions Court has failed to consider the above said contradiction.

16. In Ex.P1-complaint given by P.W.1-Malliga, immediately after the occurrence, it is stated that on 09.09.2010 evening at about 6.00 p.m. in front the deceased house both the deceased and her husband (i.e.)appellant were fighting with each other and at that time, the appellant attacked the deceased in the cheek and backside of the deceased and also threatened by stating that only after the murder of the deceased he will be peaceful. Thereafter, P.W.1-Malliga took the deceased to her house and P.W.1-Malliga has enquired the deceased about the quarrel and the deceased informed that the appellant told the deceased that he was about to bequeath an acre of land to the second wife and her children and on questioning the above said willingness at 9.00 p.m., and the appellant attacked the deceased and later both PW1-Malliga and the deceased were talking with each other and then, the occurrence of murder took place on 10.09.2010 at 3.30 a.m., on the same day night.

17. But, when adducing evidence before the Court, P.W.1-Malliga, who was examined as sole witness to prove the above said occurrence, has deposed in her chief examination itself that on 9th day of evening at 6.00 p.m. in the month of

Avani, both the appellant and the deceased were fighting with each other and on the next day, the deceased had gone for household work and after completing the work, she returned back to her house. On the next day morning at 3.30 a.m., the occurrence of murder took place. Therefore, according to the prosecution case the alleged previous occurrence took place at 6.00 p.m. on 09.09.2010, but the sole witness P.W1-Malliga has deposed before the Court that such an occurrence took place one day prior to the occurrence of murder. P.W.1-Malliga has clearly deposed that after the above said 6.00 p.m., occurrence, she went to regular household work and on the next day, she came to her house and then, the occurrence of murder took place. Therefore, the above said occurrence alleged to have happened at 6.00 p.m., on 09.09.2010 is not proved by the prosecution as rightly pointed out by the learned counsel appearing for the appellant. Therefore, the second circumstance for the occurrence (i.e.) the last seen theory alleged by the prosecution is also not proved beyond reasonable doubt by the reliable evidence.

18. The third circumstance to implicate the appellant in the above said crime is the medical evidence. According to the prosecution, on 10.09.2010 at 3.30 a.m. with an intention to murder the deceased, the appellant attacked her with M.O.2-Hacksaw blade and M.O.1- Akkuaruval on her neck, throat, jaw and shoulder and caused the death of the deceased. As already discussed, the prosecution case lies only on the circumstantial evidence, since there is no eye witness to the occurrence. In the above said circumstances, the medical evidence has an important role to decide the case. The learned counsel appearing for the appellant submitted that according to the prosecution, two weapons namely, M.O.1-Akkuaruval and M.O.2-Hacksaw blade were used to cause the injuries. But, as per Ex.P7-postmortem certificate and the admission of P.W.12-Doctor, who conducted the postmortem, the above said injuries could not have been caused by using the above said weapons M.O.1 and M.O.2 and hence, the Sessions Judge has not at all considered the above said vital factors and therefore, the findings of the Sessions Judge are incorrect.

19. According to the prosecution case, eight injuries were seen by P.W.12-Doctor, who conducted the postmortem on the body of the deceased. The prosecution side has not produced any document to prove that M.O.1-Akkuaruval and M.O.2-Hacksaw blade have been shown to the above said postmortem Doctor (or) the weapons were sent to the above said P.W.12-Doctor and then his opinion was obtained. In the above said circumstance, P.W.12-Postmortem Doctor has deposed in the Chief examination that the injuries Nos.1 to 3,7 and 8 would have been caused by M.O.2-Hacksaw blade and injury Nos.4,5 and 6 might have been caused by M.O1-Akkuaruval. But, at the time of cross examination, P.W.12-the same Postmortem Doctor has categorically admitted that the injuries No. 1 to 4 cannot be caused by using M.O.2 weapon. From the above said admission of the postmortem Doctor and the nature of injuries and also the weapons M.O.1 and M.O.2, it is revealed that the injuries found in the body of the deceased could not be caused by M.O.1 and M.O.2 as rightly pointed out by the learned counsel

appearing for the appellant. Therefore, the medical evidence does not support the prosecution case and the third circumstance relied on by the prosecution is also not proved beyond reasonable doubt.

20. The fourth circumstance relied on by the prosecution to implicate the appellant in the crime is that the appellant had surrendered before the Judicial Magistrate Court and P.W.15-Investigating Officer took the appellant in to Police custody on 22.09.2010. On the next day at 6.00 p.m., the appellant gave a voluntary statement in the presence of P.W.11-Village Administrative Officer namely, Madhaiyan and the Village Assistant namely, Nagarajan and recorded the same and from the admissible portion of the confession statement-Ex.P5, the appellant took the Investigating Officer and the witnesses to the back side of the appellant's house and under the thani bush, the appellant took M.O.1-Akkuaruval and M.O.7-blood stained banian, M.O.8-blood stained lungi and handed over the same to P.W.15-Investigating Officer and the Investigating Officer recovered the above said M.Os under Ex.P4-Seizure Mahazar.

21. The learned counsel appearing for the appellant submitted that the above said admission and recovery of weapons on the basis of the confession have not been proved by the prosecution beyond reasonable doubt and further, the above said weapons cannot cause the injuries found on the body of the deceased and therefore, the above said circumstance is also not proved beyond reasonable doubt.

22. As already discussed, the medical evidence of PW12-Doctor, who conducted the postmortem had falsified the case of the prosecution, since the Doctor clearly admitted that the injuries could not have been caused as alleged by the prosecution. Further, there are several contradictions in the oral evidence of P.W.11 and P.W.15 regarding place of recovery of the M.O.s. A perusal of Ex.P21-Serological Report of Forensic Science Department reveals that both weapons namely, M.O.1 and 2 the blood was disintegrated and they were unable to find the human blood. Further, it is seen that in the test conducted on M.O.7-blood stained banian and M.O.8-blood stained lungi also, the result of grouping test is inconclusive. Therefore, the above said material objects alleged to have been recovered on the basis of confession statement, does not also found to match with the blood group of the deceased. The above said fact is also not considered by the Sessions Court as rightly pointed out by the learned counsel appearing for the appellant. Hence, the above said circumstances of recovery of M.Os on the basis of the confession statement is also not proved beyond reasonable doubt.

23. According to the prosecution and also the evidence of P.W.14-Sub-Inspector of Police, on 10.09.2010 at 6.00p.m., P.W.1-Malliga and his two brothers namely, P.W.2-Venkatachalam and Ramakrishnan came to the police station and gave a complaint and he recorded the above said complaint-Ex.P1 and obtained signatures from the P.W1, P.W.2 and Ramakrishnan and then, registered Ex.P9-First Information Report at the police station itself. But, P.W.2-Venkatachalam has not at all deposed the above said fact of giving complaint to the police at the

time of giving evidence before the Court. P.W.1-Malliga has also not deposed that all the above said three persons went to police station and gave the complaint. Per contra, PW1-Malliga has clearly deposed only PW1's brother Ramakrishnan, had informed to the police through phone and the Police came to the place of occurrence and only the above said Ramakrishnan gave the complaint to the police station. Further, PW1-Malliga has specifically admitted that she has not given any complaint to the police station. Further, there is a delay of three and half hours in giving the complaint to the police and registering the First Information Report even though the police station is situated within 5 k.m. The complaint was also belatedly handed over to the Magistrate Court. From the above said facts, as rightly pointed out by the learned counsel appearing for the appellant, the coming into existence of the very basic documents namely, Ex.P1-Complaint and Ex.P9-First Information Report creates a serious doubt.

24. The learned counsel mainly pointed out that the prosecution has miserably failed to prove that at the time of alleged occurrence, enough light was available so as to enable P.W.1-Malliga see the appellant coming out from the occurrence place with his second wife. According to the postmortem report, the alleged occurrence took place at 3.30 a.m., on 10.09.2010. In the above said circumstance, the duty of the Investigating Officer is to investigate the availability of the light by examining the relevant witnesses from Electricity Board. But that step had not been taken by the prosecution.

25. On a careful reading of Ex.P1-complaint and Ex.P9-First Information Report, it is specifically stated that immediately after occurrence, PW1-Malliga had seen the appellant rushing to his house along with his second wife namely, Ellammal and two female children of the second wife. It is not revealed from the document that the appellant was in possession of any weapon in his hand. PW1-Malliga has not deposed before the Court that the children of the second wife also went along with the appellant and his second wife. The trial Court failed to consider the above said material contradiction also.

26. As rightly pointed out by the learned counsel appearing for the appellant P.W.1 is residing 120 feet away from the place of occurrence. But the prosecution had failed to examine any other material witnesses who are residing nearby the place of occurrence, the second wife of appellant, any other person residing nearby the place of recovery of material objects etc., and therefore, the case of the prosecution is not proved beyond reasonable doubt. The trial Court has erroneously held that the appellant has not proved his version by adducing evidence. It is settled law that the prosecution should prove its case beyond reasonable doubt.

27. From the above said discussion, we are of the view that the prosecution has miserably failed to prove any one of the circumstance relied on by the prosecution to implicate the appellant in the above said crime beyond all reasonable doubt and therefore, the benefits of doubt should be given to the appellant and therefore, the appellant is to be acquitted from the charges framed

against him.

28. In the result, the Criminal Appeal stands allowed and the impugned judgment is set aside. The appellant is directed to be set at liberty forthwith, unless he is otherwise required in connection with any other case. Fine amount, if any, paid by him, is ordered to be refunded to him and bail bond, if any, executed by him, shall stand cancelled.