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Crl. A(MD)No.428 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 04.03.2026

CORAM:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

AND

THE HONOURABLE Mr. JUSTICE P.DHANABAL

Crl. A. (MD)No.428 of 2023

Selvi
W/o.Chellapandi
Anaikulam Road
Kurandi Village, Kariapatti Taluk
Virudhunagar District.

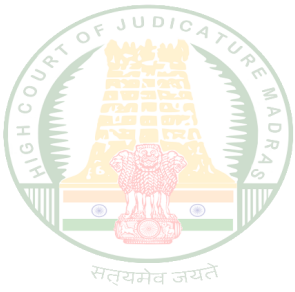
.. Appellant

Vs.

The State rep by
The Inspector of Police,
Aviyur Police Station,
Virudhunagar District.
Crime No.177/2017

.. Respondent/Complainant

Appeal filed under Section 374 (2) of Criminal Procedure Code, against the judgment and order dated 24.03.2023 in S.C.No.63 of 2018 on the file of the Additional District and Sessions Judge, Virudhunagar.



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For Appellant : Mr.M.Jothibasu
For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor

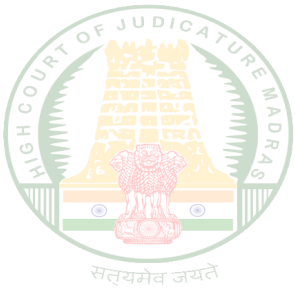
JUDGMENT

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

The appellant assails the judgment of the Additional District and Sessions Judge, Virudhunagar passed in SC No.63 of 2018 dated 24.03.2023 convicting the appellant for offence under Section 302 IPC and sentencing her to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo further rigorous imprisonment for six months.

2. The case of the prosecution is that the appellant/A1 is the wife of the deceased Chellapandi. The deceased and A1 were residing in Kurandi Village. A1 is said to have developed intimacy with A2 and they had illicit relationship. The deceased Chellapandi, who was working in Tiruppur and on coming to know of the illicit affair between A1 and A2, returned back to the village and was working as a Coolie. The deceased is said to have

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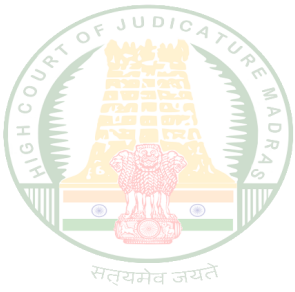
scolded both A1 and A2, when he saw both of them in his house.

2.1. On 29.09.2017 at about 2.00 a.m. when the deceased Chellapandi was sleeping, A1 is said to have thrown the grinding stone (MO2) on the head of the deceased. As a result, the deceased sustained grievous injuries and died.

2.2. A1 is said to have informed PW1, who is the father of the deceased, about the incident, which resulted in PW1 giving a statement to the Sub Inspector of Police (PW18) on 29.09.2017 at 11.00 a.m., and an FIR (Ex.P11) came to be registered in Crime No.177/2017 for offence under Section 302 IPC.

2.3. The investigation was taken up by P.W.20 and he went to the scene of occurrence at about 11.45 a.m., and prepared the observation mahazar (Ex.P2) and rough sketch (Ex.P13) in the presence of witnesses P.W.12 and P.W.14. The investigating officer recovered bloodstained cement pieces and cement pieces without bloodstain from the floor and two

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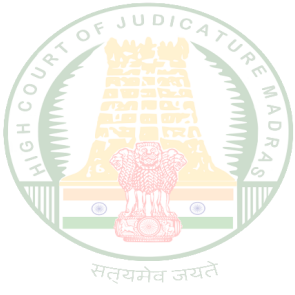
WEB COPY bloodstained bedsheets and prepared Ex.P.3. The inquest was conducted on the body of the deceased at about 13 hrs.

2.4. The dead body was sent for postmortem through Grade I Police Constable (P.W.17) with a requisition. P.W.13 - Doctor conducted autopsy on the body of the deceased and Ex.P4 is the postmortem certificate, where the following injuries were recorded:

- “1. Laceration 6x2x2 cm 1 cm above right eyebrow;
2. Laceration 6x2x2 cm 5 cm above right eyebrow;
3. Laceration Rt knee 3 x 3 x 1 cm ;
4. Laceration left elbow 3x2x1 cm ;
5. Laceration lower back 6x2x2 cm ;
6. Bleeding through nostril and left ear.”

In the final opinion, the cause of death was stated as head injury and injury in brain.

2.5. The investigating officer recorded the statements of the witnesses under Section 161 Cr.P.C., and also collected all the relevant materials.



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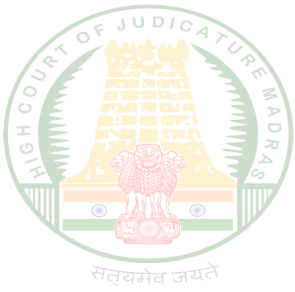
3. The police report was laid before the Judicial Magistrate No.2, Virudhunagar against A1 and A2 for offence under Section 302 IPC, 302 read with 34 IPC, 201 read with Section 302 IPC and 202 read with 302 IPC and the copies of the documents relied upon by the prosecution was supplied to the accused persons under Section 207 Cr.P.C. Thereafter the case was committed to the file of Additional District and Sessions Judge, Virudhunagar.

4. The prosecution examined P.W.1 to P.W.22 and marked Ex.P1 to P.18 and M.O.1 to M.O.7.

5. The incriminating circumstances were put to the accused persons while questioning them under Section 313 Cr.P.C., and they denied the same as false.

6. No witness was examined on the side of the accused person and no materials were relied upon by them.

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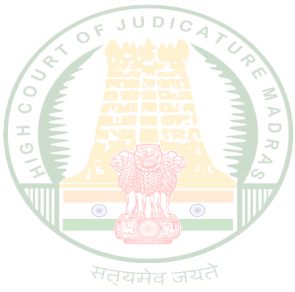
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7. The trial Court, on considering the facts and circumstances of the case and on appreciation of evidence, came to a conclusion that the prosecution has proved the case beyond reasonable doubts as against A1 for offence under Section 302 IPC. Insofar as the other offences are concerned, A1 was acquitted and insofar as A2 is concerned, he was acquitted from all charges.

8. A1 was sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for six months. Aggrieved by the same, the present criminal appeal has been filed before this court.

9. The learned counsel for the appellant submitted that the trial Court has convicted the appellant only by relying upon Section 106 of the Indian Evidence Act (hereinafter referred to as 'the Act') on the ground that the appellant was living with the deceased at the time of occurrence and since the appellant did not discharge the burden by giving a proper explanation,

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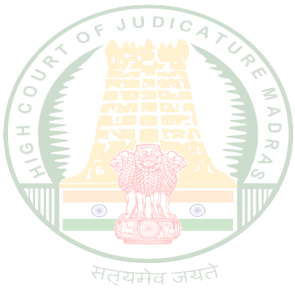
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WEB COPY the trial Court took an adverse inference and convicted the appellant for offence under Section 302 IPC. The learned counsel submitted that the prosecution did not prove through any witnesses that they had seen the appellant and the deceased in the same house either on the previous day or on the date of incident and since this foundational facts were not established, the question of applying Section 106 of the Act does not arise.

10. The learned counsel for the appellant, to substantiate his submissions, relied upon the judgments of the Apex Court in ***Satye Singh and Another v. State of Uttarakhand*** reported in **2022 (2) SCC (Crl.) 379**; the Division Bench of this Court in ***Anjalai v. State by the Inspector of Police, Vadalur Police Station, Cuddalore District***, reported in **2023 (3) MWN (Crl.) 582 (DB)** and the judgment of the Apex Court in ***Manharan Rajwade v. State of Chattisgarh*** reported in **2024 SAR (Crl.) 1145**.

11. Per contra, the learned Additional Public Prosecutor submitted that the combined reading of the evidence of P.W.4 and P.W.5 establishes that A1 was living with the deceased in the same house and the incident had

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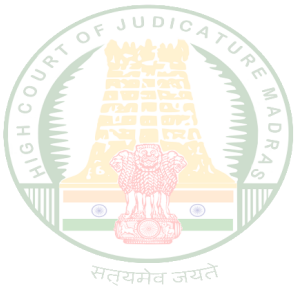
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taken place inside the house and therefore, the burden of proof is upon A1 to explain as to what actually happened inside the house. If the same is not done, an adverse inference can be drawn against A1. The learned Additional Public Prosecutor further submitted that the conduct of A1 also assumes significance since the incident had taken place on 29.09.2017 at about 2.00 am., whereas when A1 met P.W.5 on the same day at about 6.00 a.m., A1 did not speak anything about the incident. Even thereafter when PW5 went to the house of A1 at 7.00 a.m, she was sitting outside and did not inform PW5 about the incident. Hence, this conduct along with the fact that A1 did not explain as to what actually happened inside the house, clinches the case of the prosecution and hence, the judgment passed by the trial Court does not require interference of this Court.

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

13. The entire case hinges upon the circumstantial evidence. The circumstances pointed out by the prosecution are;

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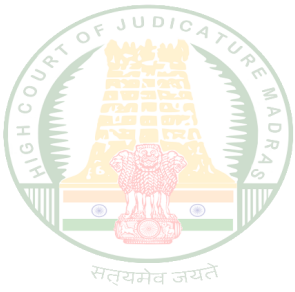
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WEB COPY (a) Motive - wherein, A1 is said to have had illicit relationship with A2 and the same was questioned by the deceased and therefore, there was a previous enmity.

(b) Last Seen Theory – since A1 was living with the deceased and the incident had taken place inside the house and A1 did not discharge the burden of proof, consequently adverse inference has to be taken against A1 ;

(c) The conduct of A1 – after incident which has been spoken to by P.W.4 and P.W.5, the recovery of the grinding stone (MO2) after the arrest of A1 and the bloodstained clothes which contained the blood group of the deceased (B) established through Ex.P18.

14. P.W.1 is the father of the deceased and he was the one who went to the police station on 29.09.2017 at 11 a.m., and based on his statement, the FIR came to be registered. PW1 turned hostile and he did not support the case of the prosecution. Therefore, the so called extra judicial confession made by A1 to P.W.1 was not proved.



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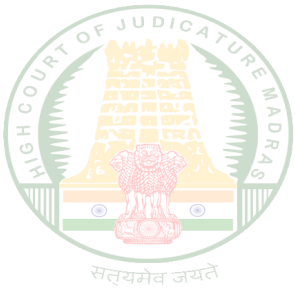
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15. PW2 and PW3 also did not support the case of the prosecution and they have also turned hostile. The same is the case with PW6, PW7, PW8 and PW9, who all turned hostile.

16. Even insofar as PW11, who is the son of A1 and the deceased, he only speaks about what he heard after the incident took place since he and his sibling were staying with their grandfather.

17. The only evidence that can be relied upon is the evidence of PW4 and PW5. PW4 is none other than the mother of A1. She talks about the illicit relationship between A1 and A2 and also the misunderstanding between A1 and the deceased. She further states that for almost six months prior to the incident, she was not in talking terms either with A1 or with the deceased. But however, two days prior to the incident, the deceased had come to her house and he was in an inebriated state. He informed PW4 that two of his children were left in his father's house and the other son, who was mentally challenged, alone is living with them. Thereafter PW4 states that

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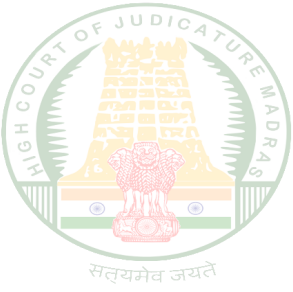
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at about 8.00 a.m., on 29.09.2017, A1 came to her house sobbing and informed that somebody had killed her husband. Immediately she went along with A1 and saw the dead body of the deceased.

18. The evidence of PW4 only speaks about the strained relationship between the deceased and A1 and the illicit relationship between A1 and A2. There is no indication in the evidence of PW4 about whether A1 was actually in the house when the incident had taken place. In fact she speaks about the version of A1 that someone had killed the deceased and the same was informed to her by A1.

19. That leaves this Court only with the evidence of PW5. He states that on 28.09.2017, he and the deceased went to the showroom to enquire for purchasing a new two wheeler. Thereafter, they had liquor and he went back to his home around 5 to 6 p.m., on 28.09.2017. He further states that on 29.09.2017 at about 6.00 a.m., A1 came to his house and enquired about the money given by her husband to PW5. PW5 informed A1 that the money has already been returned through his son. Once again PW5 goes to the

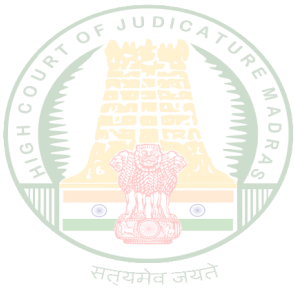
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WEB COPY house of A1 at 7.00 a.m., to inform A1 that the amount has been paid by the deceased to one Backiyalakshmi. At that time, he states that A1 was sitting outside the house.

20. This witness does not talk about seeing A1 in the house prior to the incident. He only speaks about what happened after the incident at 6.00 a.m and 7.00 a.m. At the best, it may have some bearing with respect to the conduct of A1, wherein even after the incident, A1 did not inform about the same to PW5. A careful reading of the evidence of PW5 does not inspire the confidence of this Court since he speaks about meeting A1 at 6.00 a.m., on 29.09.2017. When A1 was asking for the money handed over by the deceased, the money was not with PW5. He later realized that the deceased had already handed over the money to one Backiyalakshmi. If that is so, it is too unnatural for PW5 to leave all his work early in the morning and go over to the house of A1 to inform her about this fact. This part of the evidence is not natural and believable.

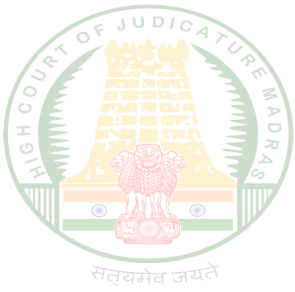


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WEB COPY 21. In the light of appreciation of evidence of these witnesses, at the best, the prosecution was able to establish motive on the strained relationship between A1 and the deceased since the deceased had questioned A1 and A2 about their illicit relationship. The other chain in the circumstances that has been brought out by the prosecution is the conduct of A1 after the incident, which at the best, is a relevant fact under Section 8 of the Act. Surprisingly MO2 was not found in the place of occurrence. It is actually said to have been recovered 100 metres away from the house in a thorny bush. As per the evidence of PW20, the bloodstain in MO2 was wiped out. Even when it was recovered under Ex.P7, there was no bloodstain in MO2. However, in the chemical analysis report marked as Ex.P18, there was bloodstain, which was identified as Group 'B' belonging to the deceased. Therefore Ex.P18 also cannot be singularly relied upon and put against A1.

22. Insofar as the medical evidence is concerned, the injuries found in the body and the final opinion makes it clear that the death of the deceased could have been caused by MO2.

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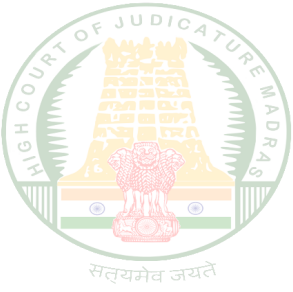
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23. The last link, which is the most vital link that had to be established by the prosecution, is the last seen theory. For this purpose, this Court has to necessarily take into consideration Section 106 of the Evidence Act.

24. It is now too well settled that Section 106 of the Act is not intended to relieve the prosecution from discharging its duty to prove the guilt of the accused. The prosecution must discharge its primary onus of proof and establish the basic facts against the accused person in accordance with law and only thereafter Section 106 of the Act can be resorted to depending upon the facts and circumstances of each case.

25. Just because A1 happened to be the wife of the deceased, it cannot be assumed that she will always be present with the deceased inside the house. Some witness had to necessarily speak about her presence in the house prior to the incident or atleast the previous day, since the incident is said to have taken place early in the morning at 2.00 a.m. If this

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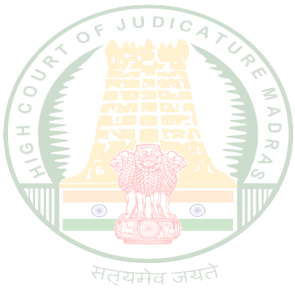


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WEB COPY foundational fact is not established, Section 106 of the Act will not come into play.

26. In the judgment reported in *Anjalai's* case, (referred supra) that was also a case involving a husband and wife where the deceased was the husband and the wife was the accused. Prosecution attempted to resort to Section 106 of the Evidence Act. The Division Bench held that where the last seen theory has not been proved, Section 106 of the Evidence Act will have no application and adverse inference cannot be drawn against the accused person.

27. The judgment of the Apex Court in *Manharan Rajwade* was also a case involving a husband and wife. Even in that case, the Apex Court held that where there is no evidence to prove the theory of last seen together, Section 106 cannot be invoked to shift the burden on the accused person.



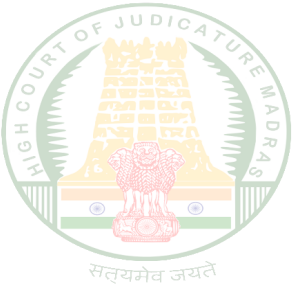
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28. The above judgments are consistent by declaring that Section 106 of the Evidence Act will come into play only if the prosecution is able to prove the theory of last seen together. In the case on hand, there is no material available to establish the fact that A1 and the deceased were last seen together before the incident. In such an event, an adverse inference cannot be drawn against A1 and Section 106 of the Act cannot be resorted to. Just because the parties happened to be husband and wife, the Court cannot assume that they will always be seen together. Even in such a relationship, it is not a question of assumption and in law, it is a question of fact. Therefore, even in a case involving husband and wife, factually the prosecution has to prove by letting in evidence to the effect that they were last seen together.

29. The trial court had convicted and sentenced A1 only by resorting to Section 106 of the Evidence Act and such finding rendered by the trial court is liable to be interfered by this Court.

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WEB COPY 30. In the light of the above discussions, the criminal appeal stands allowed and the judgment of Additional District and Sessions Judge dated 24.03.2023 in SC No.63 of 2018 is hereby set aside. The appellant is acquitted from all the charges and she is set at liberty. The bail bond shall stand cancelled.

[N.A.V, J.] & [P.D.B, J.]
04.03.2026

NCC : Yes

Index : Yes

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To

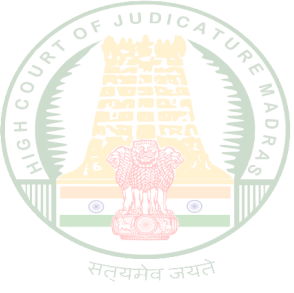
1.The Additional District and Sessions Judge,
Virudhunagar District.

2.The Inspector of Police,
Aviyur Police Station,
Virudhunagar District.

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

4.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.

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**N.ANAND VENKATESH, J
AND
P.DHANABAL, J.**

RR

Judgment made in
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