(A) The judgments of the Trial Court in S.C. 10/2005 and the High Court in Criminal Appeal Nos. 563/2007 and 599/2007 convicting the accused for offence punishable under Section 302 of IPC stands modified and the accused are hereby convicted under Section 304 Part I of IPC and sentenced to rigorous imprisonment for a term of ten years. Sentence imposed on the accused under Section 304 Part I and Section 201 IPC shall run concurrently. The accused will have the benefit of set off of the period already undergone in prison.

(B) The appeals are accordingly allowed in part.

Result:- Appeals partly allowed.

ABC 2019 (I) 230 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Mohan M. Shantanagoudar & Dinesh Maheshwari, JJ.)

Criminal Appeal No. 1932 of 2010
(From Madras High Court)
Decided On 23 January, 2019

MALAICHAMY & ANR. ***- Appellant(s).***

Versus

STATE OF TAMIL NADU ***- Respondent(s).***

Law Covered:- ***(A) Indian Penal Code, 1860 — Sections 302 & 449 r/w 34— No eyewitness — Circumstantial Evidence — Case based on — Last seen circumstance — not reliable — Motive — not directly connected to the victim — Recovery of the weapon — not proved — benefit of doubt — Acquittal. (Para 11, 13 & 15)***

(B) Criminal trial — Circumstantial Evidence — Basing conviction on — Duty of the Court — the Court should satisfy itself that the various circumstances in the chain of evidence must have been established clearly and that the completed chain is such as to rule out a reasonable likelihood of the innocence of the accused. (Para 8)

(C) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Last seen circumstance — Conduct of witness — delay of one week in giving their statements — Held, highly unnatural conduct — contradiction in statements — vital improvements— Evidence unreliable— Acquittal. (Para 11)

(D) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Conduct of interested witness —Last seen witnesses — delay of one week in giving their statements — News of the murder became known to the public at large immediately —Held, witnesses would not have missed the opportunity to state this vital fact — more particularly when they wanted a recommendation from the the father of the deceased — fatal to prosecution. (Para 11)

(E) Indian Evidence Act, 1872 — Section 27 — Recovery pursuant to the statement by the accused — sealing of the articles recovered — weapon of offence — recovered knives not sealed — Held, Such procedure adopted by the prosecution is highly improper and illegal — possibility of tempering — Held, recovery not proved in accordance with law. (Para 15)

(F) Criminal Jurisprudence — Indian Evidence Act, 1872 — Section 27 — Recovery pursuant to the statement by the accused — Basing conviction on — Held, the circumstance of recovery alone will not be sufficient to convict an accused the offence punishable u/s 302 — when all the remaining evidence of the prosecution is unbelievable— Indian Penal Code, 1860 — Section 302. (Para 15)

Facts:- *The case of the prosecution in brief is that the deceased was the son of PW-1(a member of the Tamil Nadu Legislative Assembly). Accused Nos.1 and 2 were distantly related to P.W.1. it was alleged that the three accused persons committed murder of the deceased. The suggested motive behind the offence was that there was a relationship between the son of paternal uncle of the appellants and the daughter of P.W.1's cousin. Though attempts were made to get them married, said uncle's family refused the proposal and for this reason a complaint u/s 417, IPC and Sec. 4 of the Dowry Prohibition Act was lodged. 2nd motive put forth was that the service of Accused No.2 was terminated due to misconduct, and though P.W.1 was requested to intervene, he declined to do so. The Accused Nos.1 and 2 were tried and convicted for the offences u/ss 449 and 302 r/w 34, IPC. The third accused being a juvenile and was dealt with by a different forum under the provisions of the JJ Act. The High Court confirmed the judgment of conviction.*

There were no eyewitnesses to the incident and the case of the prosecution rests solely upon circumstantial evidence. The circumstances relied by the prosecution were- (a) The last seen circumstance; (b) motive for the commission of the offence; and (c) the recovery of two knives based on the confession made by Accused No.1. The honourable Supreme Court found all the evidence as unreliable and acquitted the accused.

Law of relief:- *Very weak motive cannot be believed as a reason to commit offence.*

Held:- Before we proceed further, it would be worthwhile to recall that it has been settled through a catena of decisions that the Court should satisfy itself that the various circumstances in the chain of evidence must have been established clearly and that the completed chain is such as to rule out a reasonable likelihood of the innocence of the accused. (Para-8)

The above conclusion also casts serious doubts on the veracity of the testimony of P.W.s 4 and 5 as a whole, since a delay of one week in giving their statements to the police amounts to highly unnatural conduct on their part. Moreover, P.W. 5 also gave contradictory statements as to whether or not he stayed in P.W. 12's house on the relevant night. If P.W.4 and P.W.5 had really stayed at P.W. 12's house and seen Accused Nos.1 to 3 in front of the house of the victim at about 5.15 A.M. on 21.06.1998, they would not have missed the opportunity to state this vital fact before the M.L.A. or the Investigating Officer immediately, upon the discovery of the offence, more particularly when they wanted a recommendation from the M.L.A. Thus, it appears that though the news of the murder of the victim became known to the public at large immediately, P.W.4 and P.W.5, instead of intimating the same to the family members of the victim, gave their statements only on 01.07.1998. Additionally, in the cross-examination of P.W.22, he has given certain answers in favour of the accused based on the material on record which clearly reveal that vital improvements were made by P.W. 4 and P.W. 5 during the course of their evidence. Hence, in our considered opinion, the testimony of P.W.4 and P.W.5 is unreliable, and therefore cannot be held to have been proved by the prosecution satisfactorily. (Para-11)

All the alleged facts indicating motive relied upon by the prosecution, i.e. the affair of Mohankumar with Kalaiselvi, the money transaction, the dismissal of Accused No.2 from temporary service, etc. are not directly connected to the victim and are merely projected as grouses against his father leading to the murder of the son. Even if it is possible that a person might be murdered by an individual on account of a grouse against his parents, the circumstances on hand do not disclose strong enough reasons to do so. Firstly, even according to the case of the prosecution, the money given by Pattai Muniasamy to P.W.1 for safe custody, i.e., Rs.13,00,000/- (Rupees thirteen lakhs

only), had already been returned in instalments. Secondly, the alleged relationship between Kalaiselvi and Mohankumar does not directly concern the family of P.W.1 or the victim. Though P.W.1 admitted that he intervened to convince the boy's family to get the couple married, this does not in any way amount to a motive for killing his son when the marriage did not come through and problems arose therefrom. The third alleged motive, that P.W.1 had failed to intervene after Accused No.2 was fired from his job due to misconduct, is also unconvincing. Similar is the case for the alleged motive that P.W.1 had refused to make Muniasamy a partner in his liquor business. (Para-13)

So far as the recovery of two knives is concerned, it is based on the alleged statement made by Accused No.1. The Investigating Officer deposed that after the seizure of the knives, the same were not sealed at all, and he merely put them in a box and sent the same to the Judicial Magistrate. Such procedure adopted by the prosecution is highly improper and illegal, inasmuch as the box could have been opened at any stage by anybody and the weapon tampered with or replaced. Hence, the aspect of recovery is also not proved in accordance with law. Even otherwise, the circumstance of recovery from Accused No.1 alone will not be sufficient to convict him for the offence punishable under Section 302 of the IPC, when all the remaining evidence of the prosecution is unbelievable. (Para-15)

Counsel:- ***For Appellant(s):*** *Mr. A. Radhakrishnan, Adv.*

For Respondent(s): *Mr. M. Yogesh Kanna, Adv.*

Cases Referred:-

1. *Jaharlal Das v. State of Orissa, (1991) 3 SCC 27; (Para-8)*
2. *Vijay Kumar Arora v. State Government of Delhi NCT, (2010) 2 SCC 353; (Para-8)*
3. *Munish Mubar v. State of Haryana, (2012) 10 SCC 464; (Para-8)*
4. *Dhan Raj v. State of Haryana, (2014) 6 SCC 745; (Para-8)*
5. *Nizam v. State of Rajasthan, (2016) 1 SCC 550; (Para-8)*

JUDGMENT

MOHAN M. SHANTANAGOUDAR, J.: - Heard learned counsel for the parties.

2. The judgment dated 23.09.2008 passed by the Madurai Bench of the Madras High Court in Crl.A.No.884 of 2001 confirming the judgment dated 29.08.2001, passed in S.C.No.250 of 2000 by the

First Additional District and Sessions Judge-cum-Chief Judicial Magistrate, Madurai is called in question in this appeal by Accused Nos.1 and 2. It is relevant to mention here that Accused No.3 was a juvenile and was dealt with by a different forum under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015.

3. The case of the prosecution in brief is that the deceased, Harish Kumar, is the son of P.W.1 Velusamy and at the time of the offence Velusamy was a member of the Tamil Nadu Legislative Assembly. Accused Nos.1 and 2 are distantly related to P.W.1. One Mr. Pattai Muniasamy, the paternal uncle of Accused Nos.1 and 2, had given a sum of Rs.13,00,000/- (Rupees thirteen lakhs only) to P.W.1 for safe custody, which he got back in instalments. There was a relationship between Mohankumar (the son of Pattai Muniasamy) and one Kalaiselvi, who is the daughter of P.W.1's cousin Kannuchamy (P.W.12). Though attempts were made to get them married, Mohankumar's family refused the proposal. P.W.1 was requested by the father of Kalaiselvi to intervene and settle the matter and hence P.W.1 intervened and attempted settlement, but the same proved to be a futile exercise. In that regard, Kalaiselvi had lodged a complaint against Mohankumar under Section 417 of the Indian Penal Code (for short 'the IPC')and Section 4 of the Dowry Prohibition Act.

4. It is also the case of the prosecution that Muniasamy requested P.W.1 to take him as a partner in his liquor shop business but the same was refused by P.W.1. Accused No.2 got employment in a Fair Price Shop run by the Tamil Nadu Civil Supplies Corporation on the recommendation of P.W.1. However, the service of Accused No.2 was terminated due to misconduct, and though P.W.1 was requested to intervene yet again, he declined to do so.

5. In view of the aforementioned motive, Accused Nos.1 to 3 grouped together and committed the murder of P.W.1's son, namely, Harish Kumar, aged about 17 years. The accused allegedly committed the offence during the early hours of 21.06.1998 by trespassing into the house of P.W.1.

6. The Accused Nos.1 and 2 were tried and convicted for the offences under Sections 449 and 302 of the IPC read with Section 34 of the IPC, and sentenced to 3 years of rigorous imprisonment under Section 449 of the IPC and life imprisonment under Section 302 read with Section 34 of the IPC. The High Court confirmed the judgment of conviction.

7. There are no eye witnesses to the incident in question and the case of the prosecution rests solely upon circumstantial evidence.

8. Before we proceed further, it would be worthwhile to recall that it has been settled through a catena of decisions that the Court should satisfy itself that the various circumstances in the chain of evidence must have been established clearly and that the completed chain is such as to rule out a reasonable likelihood of the innocence of the accused. (For example, see: ***Jaharlal Das v. State of Orissa, (1991) 3 SCC 27; Vijay Kumar Arora v. State Government of Delhi NCT, (2010) 2 SCC 353; Munish Mubar v. State of Haryana, (2012) 10 SCC 464; Dhan Raj v. State of Haryana, (2014) 6 SCC 745; Nizam v. State of Rajasthan, (2016) 1 SCC 550***). It is in light of this position of law that the circumstantial evidence in the instant case needs to be examined.

9. The circumstances relied upon by the prosecution are as follows:

(a) The last seen circumstance;

(b) motive for the commission of the offence; and

(c) the recovery of two knives based on the confession made by Accused No.1 before the Police Officer, as per Section 27 of the Indian Evidence Act, 1872.

10. The first of the above, i.e. "the last seen circumstance" is spoken to by P.W.4, P.W.5, P.W.8 and P.W.9. The High Court rightly disbelieved the evidence of P.W.8 and P.W.9. However, believing the evidence of P.W.s 4 and 5, the High Court held the "last seen circumstance" proved.

11. We have perused the evidence of P.W.4 and P.W.5 meticulously. P.W.4 has deposed that after he secured an interview for the post of Conductor in the Marudhupandi Transport Corporation, in order to get a recommendation from P.W.1, who happened to be an M.L.A. at that point of time, P.W.4 along with P.W.5 had come to the house of P.W.1 at 10.00 P.M. on 20.06.1998 and found that P.W.1 was not available. Hoping to meet P.W.1 the next morning, P.W.4 and P.W.5 had proceeded to the house of P.W.12, which was situated on the same street as P.W.1's house, and stayed there for the night. At about 5.15 A.M. on 21.06.1998, P.W. 4 looked down from the terrace to see whether the door of the house of P.W.1 was open, but found the door closed. However, soon after, he saw

Accused Nos.1 to 3 in front of the house of P.W.1. P.W.5 has deposed that he saw the accused outside the victim's house on the morning of the incident, when he was leaving the house of P.W.12 with P.W.4. It has not been deposed by P.W.4 and P.W.5 that they saw the victim in the company of these accused; rather, it is their specific deposition that they only saw the accused in front of the house of P.W.1. Curiously, the Investigating Officer (P.W.22), in his cross-examination, has deposed that the statements of P.W.4, P.W.5, P.W.8 and P.W.9 were recorded on 22.06.1998, which is corroborated by the testimony of P.W. 4 and P.W. 5. But the depositions of P.W.22, P.W.4 and P.W.5 in this respect are belied by the fact that the seal and signature of the Judicial Magistrate found on the statements of P.W.4 and P.W.5 is dated 01.07.1998. P.W.22, on being confronted with the date of receipt during his cross examination, admitted these dates and failed to give a satisfactory explanation as to the delay in receipt of these statements by the Court. This strongly suggests that the statements of P.W.4 and P.W.5 were in fact recorded around 01.07.1998, and not on 22.06.1998 as they have deposed.

The above conclusion also casts serious doubts on the veracity of the testimony of P.W.s 4 and 5 as a whole, since a delay of one week in giving their statements to the police amounts to highly unnatural conduct on their part. Moreover, P.W. 5 also gave contradictory statements as to whether or not he stayed in P.W. 12's house on the relevant night. If P.W.4 and P.W.5 had really stayed at P.W. 12's house and seen Accused Nos.1 to 3 in front of the house of the victim at about 5.15 A.M. on 21.06.1998, they would not have missed the opportunity to state this vital fact before the M.L.A. or the Investigating Officer immediately, upon the discovery of the offence, more particularly when they wanted a recommendation from the M.L.A. Thus, it appears that though the news of the murder of the victim became known to the public at large immediately, P.W.4 and P.W.5, instead of intimating the same to the family members of the victim, gave their statements only on 01.07.1998. Additionally, in the cross-examination of P.W.22, he has given certain answers in favour of the accused based on the material on record which clearly reveal that vital improvements were made by P.W. 4 and P.W. 5 during the course of their evidence. Hence, in our considered opinion, the testimony of P.W.4 and P.W.5 is unreliable, and therefore cannot be held to have been proved by the prosecution satisfactorily.

12. The evidence to prove the `circumstance of motive' is also very shaky.

13. All the alleged facts indicating motive relied upon by the prosecution, i.e. the affair of Mohankumar with Kalaiselvi, the money transaction, the dismissal of Accused No.2 from temporary service, etc. are not directly connected to the victim and are merely projected as grouses against his father leading to the murder of the son. Even if it is possible that a person might be murdered by an individual on account of a grouse against his parents, the circumstances on hand do not disclose strong enough reasons to do so. Firstly, even according to the case of the prosecution, the money given by Pattai Muniasamy to P.W.1 for safe custody, i.e., Rs.13,00,000/- (Rupees thirteen lakhs only), had already been returned in instalments. Secondly, the alleged relationship between Kalaiselvi and Mohankumar does not directly concern the family of P.W.1 or the victim. Though P.W.1 admitted that he intervened to convince the boy's family to get the couple married, this does not in any way amount to a motive for killing his son when the marriage did not come through and problems arose therefrom. The third alleged motive, that P.W.1 had failed to intervene after Accused No.2 was fired from his job due to misconduct, is also unconvincing. Similar is the case for the alleged motive that P.W.1 had refused to make Muniasamy a partner in his liquor business.

14. Hence, considering the aforesaid facts and circumstances, the aspect of `motive', as put forth by the prosecution, appears to be very weak, and the same cannot be believed as a reason to commit the murder of the victim.

15. So far as the recovery of two knives is concerned, it is based on the alleged statement made by Accused No.1. The Investigating Officer deposed that after the seizure of the knives, the same were not sealed at all, and he merely put them in a box and sent the same to the Judicial Magistrate. Such procedure adopted by the prosecution is highly improper and illegal, inasmuch as the box could have been opened at any stage by anybody and the weapon tampered with or replaced. Hence, the aspect of recovery is also not proved in accordance with law. Even otherwise, the circumstance of recovery from Accused No.1 alone will not be sufficient to convict him for the offence punishable under Section 302 of the IPC, when all the remaining evidence of the prosecution is unbelievable.

16. Thus, the accused are entitled to get the benefit of doubt and are entitled to be acquitted.

17. Accordingly, the appeal is allowed, and the judgment dated 29.08.2001 passed by the First Additional District and Sessions Judge-cum-Chief Judicial Magistrate, Madurai in S.C.No.250 of 2000 as affirmed by the High Court is set aside, and the appellants are acquitted of the charges levelled against them. The appellants are directed to be released forthwith if not required in any other case.

***Result*:-** Appeal allowed.

ABC 2019 (I) 238 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Mohan M Shantanagoudar & Dinesh Maheshwari, JJ.)

Criminal Appeal No. 1016 of 2010

(From Madras High Court)

Decided On 24 January, 2019

CHAKARAI @ CHAKARAVARTHI ***- Appellant(s).***

Versus

STATE REP. BY INSPECTOR OF POLICE ***- Respondent(s).***

Law Covered*:-** ***(A) Indian Penal Code, 1860 — Sections 302 — Indian Evidence Act, 1872 — Section 24 — Conviction on the basis of extra judicial confession made to Tehsildar — extra-judicial confession is full of facts & very long — graphically discloses the antecedents of the accused, motive & gives graphic details of how each of the accused attacked the deceased other facts — held suspicious giving an impression that the same has been generated to make the courts believe the case against the appellant —Conviction set aside. (Para 7)

(B) Indian Evidence Act, 1872 — Section 24 — Detailed extra-judicial confession — Conduct of the accused — Held, if this confession is true the appellant had the foresight to guess as to who the prosecution witnesses are going to be — therefore, he was seeking to corroborate their future evidence — this would hardly be the natural conduct of an accused if he was voluntarily making a confession —cannot be relied upon — Thangavelu v. State of Tamil Nadu — relied upon. (Para 7)