



Crl.A.No.510/2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 30.11.2023

DELIVERED ON 22.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

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1.K.Malligeswari
2.K.Senthilkumar
3.Sathiyavani
4.Yuvaraj
5.Manickkam
6.Thangam
7.M.Gomathi

.. Appellants/A1 to
A7

Versus

The State represented by
The Inspector of Police
Thalaivasal Police Station
Salem District.

.. Respondent



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Prayer:- Criminal Appeal filed under Section 374[2] of Cr.P.C., to call for the records relating to the proceedings dated 13.07.2018 in SC.NO.267/2016 on the file of the learned III Additional Sessions Judge, Salem, allow the appeal and set aside the order.

For Appellants : Mr.A.Natarajan
Senior counsel for Mr.---
For Respondent : Mr.A.Gokulakrishnan
Addl.Public Prosecutor

JUDGMENT

S.S.SUNDAR, J.

The above appeal is preferred by the appellants who are arrayed as A1 to A7 challenging the judgment dated 13.07.2018 in SC.No.267/2016 by the learned III Additional District and Sessions Judge, Salem, whereby the appellants stood convicted and sentenced as follows:-

<i>Rank of the Accused</i>	<i>Conviction under Section</i>	<i>Sentence Awarded</i>
A1 to A7	148, 447 and 302 IPC	Each of the accused to undergo 3 years rigorous imprisonment and to pay a fine of Rs.1000/- each, in default, to undergo 3 months rigorous imprisonment for the offence under Section 148 IPC



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	Each of the accused to undergo 3 months rigorous imprisonment and to pay a fine of Rs.500/- each, for the offence under Section 447 IPC
	Each of the accused to undergo life imprisonment and to pay a fine of Rs.1000/- each, in default, to undergo 6 months rigorous imprisonment for the offence under Section 302 IPC

The sentences were ordered to run concurrently.

2.The case of the prosecution in a nutshell, is as follows:-

- (a) The 1st accused Malligeswari is the adjacent land owner of the deceased Venkatachalam and the land of the deceased lies in between the lands of A1. There existed a dispute between the families of A1 and the deceased in taking water from the common well which is situated in S.NO.119/4 to the land in S.No.119/6 by digging a canal. The enmity existed between them for more than a decade and it grown day by day. A2 is the son of A1 ; A3 is



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the daughter of A1, A4 is the husband of A3 ; A5 and A6 are the in-laws of A2 and A7 is the wife of A2.

(b) On 29.10.2015 at about 11.30 p.m., the accused formed themselves into an unlawful assembly, with a common object of causing damage to the dripping irrigation pipelines running through the lands of the deceased at Mercku Kattukottai, Thenkumarai, situated within the limits of the respondent police and they trespassed into the lands of the deceased and destroyed the dripping irrigation pipeline running through the lands of the deceased. When the deceased and his wife/PW1 intervened and questioned the acts of A1 to A7, A1 to A7 who were armed with wooden stick, spade and iron rods, assaulted the deceased Venkatachalam with an intention to murder him. A2 beat the deceased with the iron handle of the spade on the backside of his head making him to fall down ; stuffed a piece of cloth in his mouth since he was shouting and they jointly dragged the deceased in the ground towards the well in the land of A1 and threw the deceased into the well with a common intention of causing his death by saying "நீ இருக்கிறதாலதாண்டா நிலப்பிரச்சினை வருது சாவுடா", resulting in



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the instantaneous death of the deceased. A1, A4 and A5 also attacked PW1, wife of the deceased all over her body indiscriminately causing injuries on her, which resulted in a complaint.

- (c) **PW1-Parameswari** is the wife of the deceased. She had deposed that A1 had lands on the Northern and Southern side of her land in Thenkumarai village ; that on 15.10.2015, there was a dispute between them and the accused regarding laying of pipeline through her land ; that the accused made an attempt to lay pipe through the land by trespassing into the land of PW1 ; that when it was questioned by the deceased and his wife/PW1, the accused assaulted the deceased; that the deceased was thereafter admitted in the hospital and an enquiry was conducted by the police in that regard. Hence, there existed enmity between both parties. It is her further evidence that on the date of occurrence, i.e., 29.10.2015, at about 11.30 p.m., she heard a noise of breaking the drip irrigation pipeline laid in her land ; that PW1 and her husband/deceased went out to see as to what was happening. Her mother/PW2 and maternal aunt also followed them. They saw the accused persons breaking the pipelines laid for drip irrigation by using



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spade, iron rod, iron pipe and wooden sticks. When the deceased questioned their act, A2 assaulted the deceased on the backside of his head using the iron handle of the spade [MO1]; A4 beat the deceased on his back using iron rod [MO2] ; A5 beat the deceased on his chest using iron pipe [MO3]. When deceased raised an alarm, A5 stuffed a cloth into the mouth of the deceased and the deceased fell down. When PW1 went and intervened, A4 attacked her on her forehead using iron rod ; A1 assaulted her using a wooden stick [MO4] on her hip. A1, A3 and A7 attacked the deceased indiscriminately using wooden sticks [MOs.5 to 7]. It is her further case that the accused dragged the deceased to the common well of accused which is situate beyond two agricultural fields and threw him into the well. She also stated that when PW1, PW2 and her maternal aunt raised hue and cry, villagers gathered and on seeing them, the accused threw the weapons and fled away from the scene of crime.

(d) Thereafter, PW1 informed about the occurrence to her elder son/PW4 over phone. PW4 in turn, informed the same to his relatives and also to the Fire Services Department. He also informed the occurrence to his younger



brother. PW1 further deposed that the Fire Services Personnel asked PW4 to inform the respondent police about the incident and that thereafter, the police personnel came to the scene of crime and both the respondent police and the Fire Service Department took the dead body of the deceased from the well. PW4-son of PW1, wrote a complaint as dictated by PW1. Ex.P.1 is the complaint. Thereafter, police enquired her and recorded her statement.

(e) Pursuant to the complaint, PW10-Gunasekaran, Sub Inspector of Police attached to the respondent police at the relevant point of time, received the complaint from PW1 at 4.30 a.m., on 30.10.2015 and registered a case in Crime No.445/2015 for the alleged offences under Sections 147, 148, 323, 324 and 302 of IPC. Ex.P.10 is the FIR. He forwarded the complaint to the Inspector of Police, to the Court concerned and also to the higher officials.

(f) PW13-Viswanathan, was the Inspector of Police at the relevant point of time. He stated that he received information at 00.00 hours on 29/30.10.2015 about a dead body in a well and he came to the place of occurrence. He received the FIR in Cr.No.445/2015 at the scene of crime



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from PW10. Thereafter, he commenced the investigation. He prepared the Observation Mahazar [Ex.P.2] and a Rough Sketch [Ex.P.13] in respect of the scene of crime, namely, the well and the lands of A1 and Mani Gounder in the presence of witnesses. He also seized the material objects, namely, the spade, iron rods, iron pipe, wooden sticks, broken plastic pipes [MOs.1 to 6] under a Mahazar. Thereafter, he went to the land of PW1 and prepared an Observation Mahazar [Ex.P.4] and a Rough Sketch [Ex.P.14] in the presence of witnesses. He also recovered broken plastic pipes [MOs.9 to 14] in the land of PW1 under Mahazars [Exs.5 and 6]. He sent the material objects for chemical analysis under Form 91 [Exs.P.16 to 19]. PW13 conducted inquest on the dead body of the deceased in the presence of panchayatdars and witnesses and prepared the Inquest Report under Ex.P.15. He also enquired PW1, PW2, Valliyammal, Velayutham, Manogaran, Govindan and recorded their statements. The Investigating Officer sent the dead body of Venkatachalam for postmortem through PW12-Kulandaivel, Special Sub Inspector of Police, along with a requisition.



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(g)PW9-Dr.Neelakandan, Assistant Surgeon attached to Attur Government Hospital, on receipt of requisition on 30.10.2015, conducted autopsy on the dead body of the deceased at 12.30 p.m. He found the following injuries:-

External Injuries:-

- 1.6x4cm abrasion over both upper eyelids.
- 2.Abrasion 5x2cm over right pinna brown colour.
- 3.10x5cm abrasion over lower back brown in colour.

Internal Injuries:-

Multiple rib fractures on both sides of chest, along with posterior rib #[1-4], sternal fracture found on its upper end. Lungs and pleural cavity:- Lungs intact and congested. About 1000ml of blood found in the pleural cavity. Heart:-Intact. 20ml of unclotted blood in the chambers. Stomach:- mucosa contains about 200ml partially digested food particles seen. Intestine:-distended with gas. Liver:- Intact. Both Kidneys:- Intact. skull: No fracture. Membrane:- Intact. Brain:- Normal. Spleen: Intact and congested. Bladder-empty.



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- (h) PW11 opined that the deceased would appear to have died due to hemorrhage, shock and injury to vital organs like lungs and multiple rib fractures. Ex.P9 is the Postmortem Certificate and Ex.P.7 is the Toxicology Report and Ex.P8 is the Chemical Analysis Report.
- (i) PW13, the Investigating Officer continued the investigation and on 30.10.2015 at about 5.30 p.m., he arrested A1, A2 and A5 at Manivizhundhan Bus Stand. A2 came forward to give a confession statement voluntarily and the same was recorded by PW13 in the presence of PW1 and other witnesses. The same was typed by Aravind in a Laptop. On 13.11.2015 at 8.00 a.m., he arrested A4 and A6 at Sarvai Bus Stand. He recorded the confession statement of A4 in the presence of one Kalaiselvi and Raja. The accused were remanded to judicial custody. Since PW13 got transferred, he handed over the case diary to his successor, PW14.
- (j) PW2-Chinnapillai, mother of PW1 is also an eyewitness to the occurrence. She corroborated the evidence of PW1.



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(k)PW3-Thiyagarajan, is a resident of Thenkumarai Village. He deposed that he received the information from PW4 and went to the scene of occurrence and found the dead body of the deceased in the well.

(l) PW4-Velmurugan, is the son of PW1 and the deceased Venkatachalam. He had spoken about the dispute that existed between the accused family and his family. He also stated about the previous incident that took place on 15.10.2015 where the deceased was assaulted by the accused when he tried to prevent the accused from laying the pipeline through the land of PW1.

(m)PW5-Jayavel, is a resident of Olappadi village. He had deposed that on 30.10.2015 when he was proceeding to Thenkumarai Village at about 5.00 a.m., along with one Ramarpillai for his personal work, he saw a crowd near the well of A1. When he went there, he saw a dead body in a well. On enquiry, he came to know that it was Venkatachalam. He attested the Observation Mahazar and Rough Sketch. He also stood as a witness for seizure of material objects from the crime scene.

(n)PW6-Manimaran, is the Village Administrative Officer and he had deposed that on 30.10.2015 at about 6.00 p.m., he received a phone call from the



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respondent police and when he went to the police station, he saw A1, A4 and A5 and PW6 signed the confession statement given by A2.

(o) PW7-Kalaiselvi, was the Village Administrative Officer of Sarvai village at the relevant point of time. She stood as a witness to the confession statement given by A4.

(p) PW8-Sangeetha, is the Assistant Director of Forensic Science Laboratory, Coimbatore. She examined the internal organs of the deceased and gave Ex.P.7-Toxicology Report.

(q) PW11-Govindhan was the Station Officer in the Fire Service Department, Attur at the relevant point of time. He had spoken to about the request received from the office of the Deputy Superintendent of Police on 30.10.2015 at about 1.20 a.m. over phone about a dead body in a well in Thenkumarai village and to rescue it. Thereafter, he went to the scene of occurrence and removed the dead body with the help of his team and handed over the dead body to PW13 for further investigation.

(r) PW12-Kulandaivel, Special Sub Inspector of Police attached to respondent police had deposed that he had taken the dead body of the deceased along



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with a requisition to Attur Government Hospital for postmortem and on completion of the same, he had handed over the dead body to the family members of the deceased. He also recovered MO15-Half hand shirt, MO16-Maroon colour trouser and MO17-brown colour underwear of the deceased. He also prepared a Special Report under Ex.P12 and handed over the same to the Investigating officer-PW13.

(s) PW14, took up further investigation on 12.01.2016. Since PW13 had completed the substantial part of the investigation and recorded the statements of the witnesses, he did not record any statements. He recorded the statements of PW11-the doctor who conducted postmortem and PW8-Sangeetha, Assistant Director, Forensic Science Laboratory, Coimbatore. He completed the investigation and laid the charge sheet for the offences under Sections 147, 148, 323, 324, 302 IPC before the Court concerned.

(t) On appearance of the appellants, papers u/s.207 Cr.P.C., were served on them and the case was committed to Court of Sessions and later, transferred to the learned III Additional Sessions Judge, Salem, who framed charges as against the accused under Sections 148, 447, 302 and 352 of IPC.



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3.The prosecution examined 14 witnesses, marked 19 exhibits and 17 material objects. When the appellants were questioned u/s.313 Cr.P.C., they denied their involvement.

4.The Trial Court held that the evidence of PWs.1 and 2 are reliable, trustworthy and cogent. Even though a few discrepancies were pointed out and the possibility of death occasioned due to accidental fall of the deceased into the well which is 60 feet in depth, the Trial Court, based on the evidence of the witnesses, came to the conclusion that the death was caused due to homicidal violence and that the motive for the accused to murder the deceased is established. Since the occurrence had happened at 11.30 p.m. on 29.10.2015, the Trial Court was convinced that the presence of independent witnesses is not possible and that the prosecution case about the illegal trespass of all the accused into the land of the deceased, damage caused by them to the drip irrigation pipelines and the murder of the deceased, are proved. The Trial Court further held that the evidence



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of PWs.1 and 2 is explicit about the crime. On the basis of the medical evidence, the Trial Court reached the conclusion that the injury suffered by the deceased was caused only by the weapons that were seized by the police from the crime scene and that the multiple fractures in the body of the deceased cannot be due to any other reason except the homicidal violence spoken to by PWs.1 and 2. Hence, the Trial Court convicted and sentenced the accused as aforementioned. Challenging the conviction and sentence, the present appeal is preferred.

5.Mr.A.Natarajan, learned Senior counsel appearing for the appellants/accused assailed the impugned judgment of conviction and made the following submissions:-

- The motive for the accused to commit the crime, is not established by any independent evidence.
- There is a delay in lodging the complaint and also the FIR reaching the Court concerned.
- PWs.1 and 2, the alleged eyewitnesses to the occurrence have assumed that the death was caused by the accused and therefore, gave their version as



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if they had witnessed the crime. They are interested witnesses.

→On information from PW1 about the occurrence, PW4, son of PW1 contacted the Fire Service Department to rescue the body and not reported the incident as a crime to the police. This aspect of the case was never considered by the Trial Court.

→The narration of the incident by PW1 and PW2 is artificial and the improbability of their version can be inferred from the very unnaturality of their story.

→The Trial Court ought to have considered the vital contradictions in the evidence of PW4 and PW5.

→The material contradiction between the complaint under Ex.P1 and the evidence of PW1 before the Court, has not been considered by the Trial Court, especially when the injuries found in the body of the deceased do not tally with the statement of PW1.

→The non recovery of the Report prepared by the Fire Service Department after recovery of the dead body from the well, by the police is fatal to the



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prosecution.

→PW1 in her complaint and evidence spoke about the accused attacking her with the murder weapon, no injury is reported and PW1 did not even speak about any medical aid or treatment given to her for any injury.

→The material objects seized from the scene of occurrence do not contain any blood stains and that PW13 himself had admitted that he could not collect any blood stained cloth or sand as there was no such evidence in the place of occurrence.

→The evidence of PW9, the doctor who conducted postmortem had opined that the death might have caused due to accidental fall by the deceased and that the injuries found on the body of the deceased could also be due to such accidental fall and this evidence of PW9 has not been taken into consideration by the Trial Court.

→The Trial Court failed to consider the overall circumstances which would indicate that the presence of PW1 in the scene of crime is highly doubtful. The evidence of PW1 that the deceased was attacked by the accused ; that they stuffed a cloth in his mouth after hitting him and dragged the deceased



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for about 50 metres to the well and then threw him into the well, are improbable and unnatural and this would only falsify the evidence of PW1.

→ Learned Senior Counsel also pointed out several other contradictions and improbabilities that can be inferred from the sequence of events.

6. ***Per contra***, Mr.A.Gokulakrishnan, learned Additional Public Prosecutor submitted that the prosecution has proved its case beyond all reasonable doubts. He submitted that the conclusion of the Trial Court on the basis of the evidence is unassailable. The discrepancies pointed out by the learned Senior counsel for appellants, according to him, are not material contradictions to vitiate the judgment of the Trial Court. He submitted that the prosecution has proved its case that the murder was committed by all the accused in the same manner as spoken to by PW1 and that the judgment of the Trial Court is perfectly in order and prays for dismissal of this appeal.

7. This Court has carefully considered the rival submissions and also perused the materials placed including the impugned judgment of conviction.



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8.Points for consideration:

[a]Whether motive is established?

[b]Whether the crime has taken place in the manner reported by PW1?

[c]Whether the evidence of PW1 and PW2 is trustworthy and cogent and can be accepted?

[d]Whether the prosecution has proved its case beyond reasonable doubt?

[e]Whether the judgment of the Trial Court warrants interference?

POINT [A]:-

9.In this case, the motive is spoken to by PW1, PW2 and PW4. From the complaint [Ex.P1], the motive attributed is that A1 is having her land on the Southern and Northern of the land of PW1. Since there is no well on the Northern part of the land of A1, it is stated that on 15.10.2015, all the accused trespassed into the land of PW1 and tried to draw water to A1's land situate in the Northern side by laying a pipeline through the land of PW1. When PW1 and her husband/deceased tried to prevent them from laying the pipeline, the prosecution case is that the accused along with their henchmen, attacked the deceased. The deceased was stated to be admitted in the hospital for treatment. Though it is



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stated in the complaint that a case was registered and police enquired them, no such complaint was marked before the Court below or any independent witness who witnessed the previous incident on 15.10.2015 was examined. Exs.P13 and P14 are the Rough Sketches drawn by PW13. Ex.P13 is the Rough Sketch showing the well belonged to A1 where the body of the deceased was found. Ex.P14 is the Rough Sketch that shows the land of the deceased through which a pipeline was laid. Except referring to the traces for digging to lay a pipeline and some broken plastic pieces of pipes, no evidence is available in this case as to the actual laying of pipeline through the land of PW1. However, it is pertinent to mention that PW1 in her chief stated that accused came along with paid hooligans assaulted the deceased and had laid pipelines in the land of deceased earlier.

10.Even according to PW1, the accused are the aggressors on 15.10.2015. Though it is stated that the dispute between the families of the deceased and accused regarding laying of pipeline took place earlier on 15.10.2015, there is no independent evidence to establish the nature of the dispute from which one can draw an inference of any strong motive for all the accused to commit the heinous



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crime of murder, murdering the deceased who is just a neighbouring land owner.

It is to be noted that A1 is a lady who, according to the prosecution, owns lands on the Northern and Southern side of PW1's land. A2 and A3 are the son and daughter of A1. A4 is the husband of A3, A5 and A6 are the father-in-law and brother-in-law of A2 and A7 is the wife of A2. From the relationship it is seen that A2 and A3, who are son and daughter of A1, may have a reason to join with their mother/A1 to commit the crime. A4 to A7, though are close relatives to A1, are not blood relatives of A1 to A3. Their association to commit the murder of the deceased cannot be readily inferred. Merely because A1 had a land dispute with a stranger, it is very difficult to infer motive for A4 to A7.

11.As pointed out earlier, the nature of land dispute or the dispute regarding laying of pipeline, is not spoken to any of the witnesses. From the Rough Sketches-Exs.P13, P14 and the Observation Mahazars, Exs.P2 and P4, this Court is unable to get any clue to corroborate the evidence of PW1. Ex.P.14 is an extension of Ex.P13. We are unable to reconcile Exs.P13 and P14. Even though it is stated that Ex.P14 is the continuation of Ex.P13, the reference to broken



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gatewall, broken plastic pieces of pipe, cannot be connected to the incident as spoken to by PW1. Ex.P13 refers to the well of A1 where the dead body was found. In Ex.P2, PW13, who prepared it, has mentioned that the pipe connections from the well have been broken. This connection belongs to accused. From Exs.P13 and P14, the occurrence happened in the land belonged to the deceased. Ex.P4 is the 2nd Observation Mahazar where PW13 has mentioned about the traces of damages caused to the underground pipeline. This also does not corroborate evidence of PW1 about the motive.

12.PW1 has given evidence that the accused were prevented from laying pipeline on 15.10.2015. PW1 has stated in her complaint that on 15.10.2015, the accused had laid the pipeline through the land of PW1 and the deceased was assaulted when he tried to stop laying of pipelines. Only in continuation of the prior enmity, it is stated by PW1 that on 29.10.2015 at about 11.30 p.m., all the accused trespassed into the land of the deceased and broke the drip irrigation pipeline with iron rod, spade and wooden sticks and when PW1 and the deceased intervened, the accused attacked the deceased as well as PW1 indiscriminately.



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The mother and the maternal aunt of PW1 though witnessed the occurrence and PW2 gave evidence in tune with the evidence of PW1, the nature of dispute between the family of the accused and the reason for provoking the accused to assault the deceased. PW2 also speaks about the incident that took place fifteen days prior to the murder. She had stated that the deceased was assaulted by the accused when he prevented them from laying pipeline. From the evidence of PWs.1 and 2, the accused are the aggressors even earlier about fifteen days back. Though the deceased was attacked and was admitted in hospital in the previous incident and it is stated that a complaint was lodged, the complaint or the nature of enquiry by the police is not supported by either a written complaint or through evidence of any independent witness. This Court is, therefore unable to find a motive for the accused persons to join together to commit the murder of the deceased. **Hence, Point [A] is answered against the prosecution by holding that the prosecution has miserably failed to prove the motive aspect.**

POINT [B]:-

13.From the statement of every witness, particularly, the official witnesses,



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namely, PW13 and PW11, the incident was not reported as a murder, but reported as “body found in a well”. PW1, in the course of her chief examination, had stated that villagers gathered after hearing the hue and cry of PW1 and PW2 and that the accused fled away from the scene of crime leaving the weapons in the crime scene itself. PW1 called her elder son-PW4 over phone, who then gave information to his younger brother and relatives. Even according to PW1, PW4 contacted the Fire Service Department first and that, it was PW11, who requested PW4 to inform the incident to police. She further stated that both the Fire Service personnel and police personnel came to the spot, namely the well and rescued the body from the well. PW3, a neighbour, also spoken to the fact that on the information given by PW4, he came to the spot and only thereafter, the police as well as the Fire Service personnel came to the scene.

14. Though PW4 in his evidence, stated that his mother had informed about the fact that the deceased was attacked by the accused. It is his further version that he came to the spot, viz., well, where the body of his father was found floating. However, he admits that he informed the Fire Service Department about the



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floating of the body of this father. Only when the Fire Service personnel requested PW4 to inform the police, PW4 gave information to the police.

Thereafter, the police officials and the Fire Service personnel came to the spot. During cross examination, PW4 specifically stated that he did not inform the Deputy Superintendent of Police on the date of occurrence.

15.PW11 is the Station Officer of Attur Fire Service Station at the relevant point of time. He stated that he received information at 1.20 a.m. on 30.10.2015 about the body of the deceased in the well. It is to be noted that the information received by him is not about the homicidal violence. They were requested to rescue the body of the deceased from the well. According to PW11, the water level was upto two feet in the well and the dead body was rescued from the well. Though PW11 had stated that the information regarding the dead body was received from the office of the Deputy Superintendent of Police and spoken about the report they had prepared pursuant to the rescue operation, he admits that he did not hand over the said report to the police/Investigating Officer. From this, it is



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evidence that till the body was rescued, even the Fire service Department was not informed about any homicidal violence. No request was made by the Investigating Officer to hand over the Report which PW11 had prepared pursuant to the rescue operation.

16.It is very important to note that PW13, the Investigating Officer has admitted that he was informed about the dead body in the well at about 00.00 hours on 29/30.10.2015. Therefore, the first information that was given to the Investigating Officer at 00.00 hours was also not about the homicidal violence, but about a dead body in the well. Hence, the complaint under Ex.P1 lodged at 4.30 a.m. on 30.10.2015, even according to PW1, is long after the police visited the scene of occurrence.

17.Also, the complaint [Ex.P1] and the FIR [Ex.P10] reached the jurisdictional Magistrate Court only at 1.00 p.m. on 30.10.2015. Though the complaint was given only on 30.10.2015, it is dated 29.10.2015. PW13- Investigating Officer has not given any explanation, why the FIR was sent to the



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Magistrate Court belatedly, though the complaint was given at 4.30 a.m. on 30.10.2015 and the distance between the Police Station and the Court was only 18 Kms. From the sequence of events and evidence of all the witnesses, this Court is able to see that the incident was reported as ‘a dead body found in the well’ and not about homicidal violence. **Hence, this Court is of the view that the crime has not been reported in the manner as alleged by PW1. Point [B] is answered accordingly.**

POINT [C]:-

18.In the complaint [Ex.P1], PW1 has stated about the nature of dispute between the accused and her family. She categorically stated in her complaint that the accused had laid the pipeline through their land to draw water to the land of A1 on the Northern side. Therefore, the accused are the aggressors and that they had laid the pipeline through the land of the deceased on 15.10.2015 itself. Then the question arises for consideration is what prompted the accused to again break the drip irrigation pipeline of the deceased on 29.10.2015. When the act of laying pipe through the land of the deceased was accomplished on 15.10.2015 itself, the



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case of PW1 that the accused again came on 29.10.2015 and damaged the drip irrigation pipeline of the deceased, is not believable. Perusal of Ex.P2 and Ex.P4 along with Sketch-Exs.P13 and P14, the broken PVC pipes and gate valve are seized near the well of accused where the body of deceased was found and at the place where underground pipeline was laid in the land of deceased. Therefore, case of P.W.1 that accused were damaging the drip irrigation of pipelines of deceased is false. In the complaint, she further states that the deceased and she prevented the accused from damaging the dripping irrigation pipeline. She had stated in the complaint [Ex.P.1] as follows:- "நானும் என் கணவரும் ஓடி சென்று தடுக்கவே செந்தில்குமார் தன் கையில் வைத்து இருந்த இரும்பு மண்வெட்டியின் பைப்பால் என் கணவரின் பின் மண்டையில் அடிக்கவே என் கணவர் ரத்தம் சிதறி கீழே சாய்ந்தார். என்னை மல்லிகேஸ்வரி, யுவராஜ், மாணிக்கம் ஆகியோர் கம்பி, துடியால் ஓங்கி முன் மண்டை மற்றும் இரும்பு மற்றும் உடலில் உள்ள பல இடங்களில் இரும்பு பைப்பாலும், துடியாலும் அடித்தார்கள்..." However, in her evidence she had stated as follows:- "அப்போது மல்லிகேஸ்வரி மகன் செந்தில்குமார் இரும்பு புடி போட்ட மண்வெட்டி காம்பால் என் கணவரின் பின் மண்டையில் அடித்து விட்டார். நீதிமன்றத்தில் உள்ள இரும்பு



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மணவெட்டியால்தான் செந்தில்குமார் என் கணவரின் பின் மண்டையில் அடித்தார். இரும்பு மணவெட்டி சா.பொ.1 ஆகும். யுவராஜ் இரும்பு கம்பியால் என் கணவரின் முதுகில் பலமுறை அடித்தார். அந்த இரும்பு கம்பி சா.பொ.2 ஆகும். மாணிக்கம் இரும்பு பைப்பால் என் கணவரின் நெஞ்சு மீது அடித்தார். அந்த இரும்பு பைப்பு சா.பொ.3 ஆகும். என் கணவர் அய்யா, அம்மா என்று கத்தினார். அவ்வாறு கத்தும்போது மாணிக்கம் என் கணவரின் வாயில் துணியை வைத்து அடைத்தார். என் கணவர் கீழே சாய்ந்து விட்டார். நானும் போய் தடுத்தேன். என்னை யுவராஜ் இரும்பு கம்பியால் என் முன் மண்டையில் அடித்தார். மல்லிகேஸ்வரி தடியால் என் இருப்பில் அடித்தார். மேற்படி மரதடி சா.பொ.4 ஆகும். மாணிக்கம் இரும்பு பைப்பால் என்னுடைய இருப்பின் மீது அடித்தார்..."

19.From the Postmortem Certificate [Ex.P9], it is seen that there is no external injuries on the head. The doctor who conducted postmortem, namely, PW9, except referring to some abrasions on the right eye, leg and back, has not found any other external injuries to account for the cause of death of the deceased due to assault by weapons which are seized at the scene of occurrence.



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20.PW13, in his cross examination, has stated as follows:-"..அவ்வாறு சொல்லியுள்ளதில் பிரேதத்தின் தலையின் பின்பக்கத்தில் காயம் இருப்பதாக சொல்லப்படவில்லை. வெளிப்படையான காயம் இல்லையென்பதால் தான் நான் சொல்லவில்லை என்றால் சரிதான்.....சம்பவ இடத்தில் இரத்தமோ மாதிரி மண்ணோ கைப்பற்றியிருக்கிறீரா என்றால் சம்பவ இடங்களில் அப்படியான தடயங்கள் எதுவும் இல்லை நான் கைப்பற்றிய ஆயுதங்களில் இரத்தக்கரை இல்லை. மேற்படி ரத்தம் குறித்த சந்தேகம் வந்ததா என்றால் சந்தேகம் வந்தது சான்றுபொருட்களை அவ்வாறாகவே கைப்பற்றி அனுப்பினேன். மேற்படி ஆவணங்கள் வழக்கிற்கு சம்மந்தப்படாத ஆவணங்கள் என்பதால்தான் சான்று பொருட்களை நான் தடய அறிவியல் ஆய்வகத்திற்கு அனுப்ப நடவடிக்கை எடுக்கவில்லை என்றால் சரியல்ல.....அ.சா.1 என்னுடைய விசாரணையில் தன் கணவர் ஓடி போய் புதுசா பைப் போட்டிருக்கிறோம் ஏன் உடைக்கிறீர்கள் என்று கேட்டதாக சொல்லியிருக்கிறீரா என்றால் அவ்வாறு சொல்லவில்லை. மேலும் என் விசாரணையில் அ.சா.1 யுவராஜ் இரும்பு கம்பியால் தனது



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கணவரின் முதுகில் பலமுறை அடித்ததாகவோ மாணிக்கம் இரும்பு
பைப்பால் என் கணவரின் நெஞ்சு பகுதியில் அடித்ததாகவும் என் கணவர்
கத்தும்போது மாணிக்கம் துணியை வாயில் வைத்து அடைத்தார் என்று
குறிப்பாக சொல்லியிருக்கிறீரா என்றால் அவ்வாறு சொல்லவில்லை.
மேலும் என்னுடைய விசாரணையில் அ.சா.1 கணவரை எதிரிகள்
மல்லிகேஸ்வரி, சத்தியவாணி, சுகாமதி ஆகியோர்கள் தடியால்
அடித்தார்கள் என்று சொல்லியிருக்கிறீரா என்றால் அவ்வாறு
சொல்லவில்லை." He has further stated that "முதல் தகவல் அறிக்கையில் 7
எதிரிகள் மற்றும் பலர் என்று சொல்லப்பட்டுள்ளது என்றால் சரிதான்...."

21.Surprisingly, PW13 admitted that he has examined only the relatives who are neighbours of the deceased and no one else. However, the explanation offered by PW13 for not examining any other neighbour is that there was no other house in the neighbourhood. However, PW1 in her evidence has stated that the accused fled away from the crime scene fearing that people from neighbourhood will come after hearing the hue and cry of PW1.

22.PW1 in her evidence, has stated that her husband was dragged through



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agricultural fields and was thrown in the well that belonged to A1. From the Rough Sketch, it is seen that there is a well that belonged to the deceased himself very near to the place of occurrence. However, it is the version of PW1 that the deceased was dragged to the well of A1 which is far away from the land of deceased and the distance is not less than 50 metres. It is not necessary for the accused to drag the deceased to a distance and then throw him in their own well, when a well is very much available in the land of deceased near the scene of occurrence. Out of seven accused, three are female members. It is quite unnatural for the accused who are not professionals to drag the deceased to a far away well and push the deceased alive into their own well that too in the presence of PW1, PW2 and another.

23.It is also to be noted that PW1 has specifically deposed that a white cloth was stuffed into the mouth of the deceased before he was dragged to the well. It is to silence the deceased. When PW1 was there, why should they think to prevent the deceased alone to make noise. The alleged cloth was not seized by the Investigating Officer and produced as a material object before the Court. It is also



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to be noted that the complaint was given only at 4.30 a.m. even as per Ex.P1 and

the FIR marked as Ex.P10. However, the police came to scene of crime even at 00.30 hours on 30.10.2015, according to PW13. Therefore, the complaint under Ex.P1 cannot be treated as one that emanated from PW1. Further, in the complaint, PW1 had specifically referred to the presence of all the seven accused and seven more persons, who can be identified but cannot be named. However, the presence of seven more persons in the scene of occurrence in relation to murder was given a go-by, when the complainant was examined as PW1. PW2 does not speak about the presence of others apart from the accused herein.

24.It is the categorical evidence of PW1 that blood splashed when A2 attacked the deceased with a spade on the backside of his head. However, as pointed out earlier, the Postmortem Certificate as well as the evidence of PW9 and the evidence of PW13 is specific that there is no blood injury on the body of the deceased and no blood oozed from the head of the deceased. None of the material objects was found with blood stains and therefore, no material object which was



allegedly used for the offence was sent for Forensic analysis. All the material objects are agricultural equipments. When no blood stain cloth of the deceased or the blood stained earth was found at the scene of occurrence, the falsity of the evidence of PW1 is ignored by the Trial Court. When a witness gets a clue from her belief and consciously gives false evidence, her evidence as a whole has to be carefully looked into. On a careful analysis of the evidence of PW1, this Court is of the view that her evidence is on the basis of what she believed as true and not from what she witnessed through her own eyes. From the overall evidence, this Court finds that the evidence of PW1 and PW2 are not corroborative and cogent and that the Trial Court has failed to appreciate the unnaturality and the improbability or falsity of the evidence of PW1 and the glaring contradictions which were never explained by the prosecution. **Hence, this Court comes to the irresistible conclusion that the oral evidence of PW1 and PW2 is not trustworthy and reliable. It is not safe to rely upon the evidence of PW1 and PW2 whose evidence are not only unreliable but contains several improbabilities which cannot be reconciled when we see the entire evidence.**



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**DELAY IN FIR AND ABSENCE OF ANY ACCEPTABLE EXPLANATION
FOR THE MATERIAL CONTRADICTIONS IN THE EVIDENCE:-**

25.It is the evidence of PW1 that the occurrence was on 29.10.2015 at about 11.30 p.m. It is also admitted that the complaint was lodged at 4.30 a.m. on 30.10.2015, with a delay of five hours. The FIR reached the Court by 1.00 p.m. The evidence of PW11-Station Officer of Attur Fire Service Station is categorical to the effect that he received the information about the dead body in a well at about 1.20 a.m. on 30.10.2015 and that he visited the spot at 1.40 a.m. He had also spoken about the fact that the Investigating Officer-PW13 was present in the scene when the rescue operation was done by him. PW4, in his evidence admits that he was the one who gave information to the Fire service Department. He specifically refers to the presence of police officials before the arrival of the Fire Service personnel. Therefore, it was only after a preliminary investigation and the rescuing of the dead body from the well, the complaint under Ex.P1 was given by PW1 at 4.30 a.m. However, the prosecution has built a story that police came to



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the spot after receipt of the complaint-Ex.P1 at 4.30 a.m. following the incident that took place at 11.30 p.m on 29.10.2015. From the overall evidence, this Court is unable to accept the case of the prosecution that PW1 and her relatives had witnessed the crime. The conviction based on their evidence alone vitiates the verdict.

**26.GLARING CONTRADICTIONS AND MATERIAL CIRCUMSTANCES
IGNORED BY THE TRIAL COURT:-**

- ♦The delay in lodging the complaint and the fact that the FIR reached the Court concerned only at 1.30 p.m. on 30.10.2015.
- ♦The complaint refers to the presence of seven more persons who can be identified by PW1 but cannot be named. None of the witnesses have spoken about the presence and involvement of seven more persons in relation to the incident that took place on 29.10.2015.
- ♦The complaint was lodged by PW1 after the police officials came to the spot. However, according to PW1, the police officials came to the spot only 30 minutes after lodging of the complaint. PW13 also



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admits that he received the information about the dead body in a well at 00.00 hours on 30.10.2015 and visited the place of occurrence on hearing the information.

◆PW1 admits that her son PW4 reported the incident to a superior officer [Deputy Superintendent of Police]. However, PW4 states that he does not know any superior police official or about any information which he has passed on to any such superior officer. However, PW11 in his evidence has spoken to the fact that he received information from the office of the Deputy Superintendent of Police regarding a dead body in a well with a request to rescue the body.

◆PW13 admits that he has not seen any evidence or seized any object stained with the blood of the deceased and he has not collected blood stained earth as he did not find any such evidence at the place of occurrence.

◆Even though PW1, according to her, witnessed the crime along with her mother and maternal aunt, none of them made any attempt to save the deceased when he was beaten by the accused and a white cloth



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was thrust in his mouth or when he was dragged to a well by crossing two agricultural fields to reach a far away well till he was dumped in the well alive. When PW1 knows that her husband is dumped in the well alive and neighbours gathered around them immediately, she did not make an attempt to save her husband who could have been saved by giving immediate treatment. The Doctor [PW9] who conducted the postmortem, has given his statement regarding the nature of injuries as follows:-"60 அடி கிணற்றில் 55 வயதுள்ள ஒரு நபர் விழும்போது மேற்படி காயங்கள் ஏற்பட வாய்ப்புள்ளது என்றால் வாய்ப்புள்ளது. ஒரு நபர் தானாக கிணற்றில் விழும்போது நெஞ்சு எலும்பு உடைய வாய்ப்புள்ளதா என்றால் வாய்ப்புள்ளது."

◆Even according to PW9, the death was caused due to excessive internal bleeding and damage caused to vital organs and on account of multiple fractures.

◆If the evidence of PW1 and PW2 is eschewed, absolutely, there is no evidence to connect the accused to the crime.



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POINTS [D] AND [E]:-

27. In view of the foregoing reasons and in the absence of any explanation to the material contradictions, this Court, having regard to the fact that PW1 has motive to implicate the accused/appellants on account of prior incident where the accused are the aggressors, the conviction solely based on the evidence of PW1 and PW2 who are interested witnesses cannot be sustained. **Hence, this Court holds that the prosecution has not proved its case beyond all reasonable doubts and the conviction based on uncorroborated evidence and materials with unexplained contradictions in key witnesses, cannot be sustained and therefore, the Judgment of the trial court has got to be made undone by upsetting the same and the appellants are entitled for acquittal. Points [D] and [E] are answered accordingly.**

28. Accordingly, the Criminal appeal stands **allowed** and the conviction and sentence imposed on the appellants vide judgment dated 13.07.2018 in SC.NO.267/2016 by the learned III Additional Sessions Judge, Salem, is set aside



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and the appellants are acquitted of all charges levelled against them.

29.It is reported that the appellants are on bail. Bail bonds, if any executed by them, shall stand terminated. Fine amount if any paid, shall be refunded to them.

[SSSRJ] [SMJ]
22.12.2023

AP

Internet : Yes

Index : Yes / No

To

- 1.The III Additional Sessions Judge
Salem.
- 2.The Judicial Magistrate No.2,
Attur.
- 3.The Inspector of Police
Thalaivasal Police Station
Salem District.
- 4.The Public Prosecutor
High Court,Chennai.



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S.S.SUNDAR, J.
AND
SUNDER MOHAN, J.

AP

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