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Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.04.2024

PRONOUNCED ON : 17.04.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

Crl.A.No.323 of 2019

Ananth

... Appellant/Accused No.3

VS.

The Additional District Superintendent of Police

Vazhapadi Police Station,

Crime No.102/2014, Salem.

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, to set aside the Judgment of conviction and sentence passed in Spl.S.C.No.1/2014 dated 21.03.2019, against him by the learned Sessions Judge, Mahila Court, Salem and acquit him.



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

For Appellant : M/s.Udayashankar M.G.
For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor

Crl.A.No.307 of 2019

Boopathy

...Appellant/Accused 1

vs.

State rep. by,
Deputy Superintendent of Police
Vaazhapadi Police Station,
Salem.
(Crime No. 102 of 2014)

...Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, to set aside the Judgment of conviction and sentence passed in Spl.S.C.No.1/2014 dated 21.03.2019 against him by the learned Sessions Judge, Mahila Court, Salem and acquit him.

For Appellant : Mr.S.Ashok Kumar
Senior Counsel
for M/s.Palaninathan.P.
For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor

Crl.A.No.315 of 2019

1. Prabakaran
2. Balakrishnan

...Appellants/Accused No.4 and 5 in Jail

vs.



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

The State rep. by
Deputy Superintendent of Police,
Valapady Police Station, Salem District.
(Crime No.102/2014).

...Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure against the Judgment dated 21.03.2019 passed by the learned Sessions Judge, Mahila Court, Salem in Spl.S.C.No.1/2014 and acquit them.

For Appellants	: Mr.K.Sakthivel
For Respondent	: Mr.M.Babu Muthumeeran Additional Public Prosecutor

Crl.A.No.480 of 2019

Snake babu @ Anandha Babu

...Appellant/Accused No.2

VS.

State rep by,
Deputy Superintendent of Police
Valapadi Police Station,
Salem.
(Crime No.102/2014).

...Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, to call for the records relating to the Judgment dated 21.03.2019 in S.S.C.No.1 of 2014 on the file of the Mahila Court, Salem and set aside the same.

For Appellant	: Mr.K.T.Sivakumar for M/s.A.K.Vasanthakumar
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Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

For Respondent

: Mr.M.Babu Muthumeeran
Additional Public Prosecutor

COMMON JUDGMENT

(Order of the Court was delivered by **SUNDER MOHAN,J.**)

These Criminal Appeals have been filed by Accused Nos.1,2,3,4 and 5, challenging the conviction and sentence imposed upon them vide judgment dated 21.03.2019 in Spl.S.C.No.1 of 2014, on the file of the learned Sessions Judge, Mahila Court, Salem.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. (i) It is the case of the prosecution that A1 was working as a conductor in a bus; that he was in the habit of being friendly with the girls who travelled in the bus; that he was a Panchayat Member, running a shop and used to give Chocolates and Stationery to school children on the occasion of Independence Day and Republic Day celebrations; that he used to lure girl children and indulge in sexual assaults; that the victim was



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

studying fifth standard at Chendrapalayam Primary School and whenever, she visited the shop run by A1, he used to gift her with Chocolates and Biscuits and committed sexual assaults on her; that A2 to A5 were A1's friend and they used to consume liquor together and during one such drinking session, A1 had expressed to A2 to A5, that he wished to have sexual intercourse with the victim; that in order to fulfil his wish on 14.02.2014, at about 12.00 mid night, A1 to A3 kidnapped the victim from her house; that A1 to A3 informed A4 and A5 also to join them and thereafter, they took the victim to a remote place and all of them committed penetrative sexual assault; that when the victim resisted, she was injured; that the accused thereafter strangled the neck and pressed the chest of the victim, as a result of which, she died; that thereafter, the accused sprayed talcum powder on the body of the deceased, hanged the body of the deceased in a Neem Tree and fled away from the scene of occurrence.

(ii). It is the further case of prosecution that A1 had taken away the silver waist cord [அரைணாகொடி] worn by the deceased; that P.W.1, the



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

father of the victim, on coming to know that his daughter was missing, went in search of her; that he came to know that her body was found near a mountain, went to the said place, where he saw his daughter hanging from a Neem Tree. He thereafter went to the Police Station and made a complaint [Ex.P1].

(iii) P.W.26/Sub Inspector of Police, received the complaint and registered the First Information Report in Crime No.102 of 2014, for the offence under Section 302 of the IPC, and thereafter, despatched the said FIR to the learned Judicial Magistrate – VI, Salem.

(iv) P.W.30/Inspector of Police took up the investigation and prepared the Rough Sketch (Ex.P32) and Observation Mahazar (Ex.P3) in the presence of P.W.16/Village Administrative Officer and his assistant [P.W.17]. He conducted the Inquest between 12.15 p.m. and 2.15 p.m. and prepared the Inquest report [Ex.P33]. He thereafter made a requisition for conducting a post-mortem, which was conducted by P.W.19, who issued



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

the post-mortem certificate [Ex.P17]. Thereafter, in the presence of P.W.15 and P.W.16, he seized the dress materials of the deceased, namely (a). A green-coloured top, which had a gold zari border. (b). A brown-coloured churidar pant. (c). A maroon colour nighty (d). A talcum powder for women and (e). the blood stains found in a rock collected in a cotton cloth and sent those articles to the Court under Form No.91 [Ex.P35]. He also seized the saree that was used to hang the deceased and sent it to the Court under Form No.91 [Ex.P36]. He thereafter, handed over the investigation to P.W.31/Deputy Superintendent of Police, Vazhapadi.

(v) P.W.31 examined a few other witnesses and the Doctor who conducted the post-mortem and altered the offences to Section 4 of the Protection of Children from of Sexual Offences, 2012, [hereinafter referred to as ['POCSO']] and sent the Alteration Report [Ex.P38] to the Court. On 19.02.2014, P.W.18 produced A1 and A2 and also the Extra Judicial Confession given by them to him [P.W.18]. He thereafter arrested the



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

accused and recorded their confession. On the basis of confession of A1, the admissible portion of which was marked as Ex.P39, he seized the waist cord of the deceased, which weighed 27.5 grams and measured 107 cm in length. On 20.02.2014, he examined the parents of the deceased by showing the waist cord seized from A1. On 20.02.2014, he had altered the offence to Sections 302 of the IPC and 6 of the POCSO Act, and sent the Alteration Report [Ex.P40] to the Court.

(vi) Thereafter, on secret information and with the assistance of P.W.18, he arrested A3, A4, and A5 and seized a Hero Honda bike bearing Reg.No.TN 30 M 0599 from the possession of A4 and a Hero Honda bike bearing Reg.No. TN 30 AX 5258 from the possession of A3. On 27.02.2014, he made a request to the learned Sessions Judge, Mahila Court, Salem, to subject the accused to a medical examination. On 06.03.2014, after obtaining orders from the learned Magistrate/Judge, medical examination was conducted for A1, A2 and A4. The medical examination for the other accused, namely A3 and A5, was conducted on



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

12.03.2014. On 06.03.2014, he sent the Vaginal Swab and Vaginal Smear collected from the deceased for a forensic examination. He also made a request to compare the DNA of the accused and made a requisition to collect the FTA card of the accused. After examination of all the witnesses, he filed the Final Report for the offences under Sections 120 (B), 450, 450 r/w 34, 363, 366, 302 r/w 34, 404, 404 r/w 34, 201 r/w 302 of the IPC and Section 6 r/w 5(g) and (m) of the POCSO Act, 2012, and 376 (D) of the IPC, before the learned Sessions Judge, Magalir Neethi Mandram, Salem.

(vii) On the appearance of the appellants, the provisions of Section 207 of the Criminal Procedure Code were complied with, and the case was taken on file as Spl.S.C.No.1 of 2014 by the learned Sessions Judge, Magalir Neethi Mandram, Salem. During trial, the Court framed charges under Sections 120 (B), 450, 363, 366, 302 r/w 34, 404, 201 r/w 302 of the IPC and Sections 5(g)(m) and 6 of the POCSO Act, 2012 as against the first accused and Sections 120 (B), 450 r/w 34, 363, 366, 302 r/w 34, 404 r/w 34, 201 r/w 302 of the IPC and Sections 5(g)(m) and 6 of the POCSO Act,



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

2012 as against the accused 2 to 5, and when questioned, the appellants pleaded 'not guilty'.

(viii) To prove the case, the prosecution examined 33 witnesses as P.W.1 to P.W.33, marked 63 exhibits as Exs.P1 to P63, and marked 10 Material Objects as M.O.1 to M.O.10. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused examined three witnesses as D.W.1 to D.W.2 and marked 14 documents as Ex.D1 to D14. The appellants have not marked any material objects.

Against	Offence under Section	Sentence imposed
1st appellant	Section 120(B) of the IPC	To undergo 10 years RI with fine of Rs.5,000/-, in default, to undergo 6 months SI.
	Section 450 of the IPC	To undergo 10 years RI with fine of Rs.5,000/-, in default, to undergo 6 months SI.
	Section 363 of the IPC	To undergo 7 years RI with fine of Rs.5,000/-, in default, to undergo 6 months SI.



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

WEB COPY

Against	Offence under Section	Sentence imposed
	Section 366 of the IPC	To undergo 10 years RI with fine of Rs.5,000/-, in default, to undergo 6 months SI.
	Section 302 r/w 34 of the IPC	To undergo life imprisonment with fine of Rs.5,000/-, in default, to undergo 6 months SI.
	Section 404 of the IPC	To undergo 3 years RI with fine of Rs.5,000/-, in default, to undergo 6 months SI.
	Section 201 r/w 302 of the IPC	To undergo 7 years RI with fine of Rs.5,000/-, in default, to undergo 6 months SI.
	Section 5 (g) (m) and 6 of the POCSO Act	To undergo life imprisonment with fine of Rs.5,000/-, in default, to undergo 6 months SI.
The above sentences were directed to run concurrently		
Appellants 2 to 5	Section 120(B) of the IPC	Each of them to undergo 10 years RI with fine of Rs.5,000/- each, in default, to undergo 6 months SI each.
	Section 450 r/w 34 of the IPC	Each of them to undergo 10 years RI with fine of Rs.5,000/- each, in default, to undergo 6 months SI each.
	Section 363 of the IPC	Each of them to undergo 7 years RI with fine of Rs.5,000/- each, in default, to undergo 6 months SI each.



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

Against	Offence under Section	Sentence imposed
	Section 366 of the IPC	Each of them to undergo 10 years RI with fine of Rs.5,000/- each, in default, to undergo 6 months SI each.
	Section 302 r/w 34 of the IPC	Each of them to undergo life imprisonment with fine of Rs.5,000/- each, in default, to undergo 6 months SI each.
	Section 404 r/w 34 of the IPC	Each of them to undergo 3 years RI with fine of Rs.5,000/- each, in default, to undergo 6 months SI each.
	Section 201 r/w 302 of the IPC	Each of them to undergo 7 years RI with fine of Rs.5,000/- each, in default, to undergo 6 months SI each.
	Section 5 (g) (m) and 6 of the POCSO Act	Each of them to undergo life imprisonment with fine of Rs.5,000/- each, in default, to undergo 6 months SI each.
The above sentences were directed to run concurrently		

(ix) Challenging the above conviction and sentence, the appellants have preferred these appeals.

4. Mr.Ashokkumar, the learned Senior Counsel for A1/appellant, in Crl.A.No.307 of 2019 submitted that the circumstances have not been conclusively established by the prosecution; that the prosecution has



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

proceeded on the basis of the surmises and conjunctures and solely relies upon the Extra Judicial Confession given by A1 and A2, before the Village Administrative Officer [P.W.18], which cannot be believed; that the accused were arrested much earlier and therefore, the arrest and recovery as projected by the prosecution cannot be believed; that the learned Magistrate had initialed on 19.02.2014 in some of the documents said to have been prepared on 20.02.2014; that the evidence of last seen was not established as P.W.7 turned hostile; and that the evidence of Investigating Officer and the other witnesses suggest that prosecution case cannot be relied upon. The other learned counsels for the appellants reiterated the submissions made by the learned senior counsel and submitted that the accused were innocent and had been falsely implicated in this case.

5. (i) Mr.M.Babu Muthumeeran, the learned Additional Public Prosecutor, appearing for the State/Respondents, submitted that the Extra Judicial Confession given by A1 and A2 is corroborated by other circumstances, including false information given by A1 to P.W.1, when the



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

witnesses went in search of the victim; that the recovery of the waist cord that belonged to the deceased from the possession of A1, establishes A1's guilt and the involvement of the other accused.

(ii) The learned Additional Public Prosecutor further submitted that A1 to A3 were subjected to medical examination, and the Doctor found injuries in their private parts, suggesting that the same could have occurred due to forcible sexual intercourse. The learned Additional Public Prosecutor, therefore, submitted that the evidence adduced on the side of the prosecution pointed out the guilt of the accused and, hence, prayed for dismissal of these appeals.

6. We have carefully considered the rival submissions and have perused all the relevant records.

7. The prosecution had examined 33 witnesses. P.W.1 is the father of the victim and defacto complainant. P.W.2 is the mother of the victim.



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

P.W.3 is the nephew of P.W.1 and P.W.2. P.W.4 is the neighbour of the deceased, whose saree, according to the prosecution, was used by the accused for hanging the deceased from the Neem Tree. P.W.5 was examined by the prosecution to show that she saw the accused consuming alcohol near Mariamman Temple, on 14.02.2014 turned hostile. P.W.7 and P.W.8 were examined to show that they saw the deceased along with the accused on the night of 14.02.2014 turned hostile. P.W.9 is the relative of P.W.1, P.W.2 and the deceased and he is a hearsay witness. He was originally suspected by the Police of being involved in the offence. P.W.10 is the wife of P.W.9 and she is also a hearsay witness and has deposed that the deceased was her daughter's friend; and that the deceased used to be in their house to give company to their daughter during the night.

8. P.W.11 is the daughter of P.W.9 and P.W.10, who corroborates the evidence of P.W.9 and P.W.10. P.W.12 is a hearsay witness. P.W.13, who was examined by the prosecution to establish the circumstances of the last seen turned hostile. P.W.14 is the friend of the deceased and has stated that



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

she knew the accused. P.W.15, who was also examined to prove the circumstances of the last seen also turned hostile. P.W.16 was the Village Administrative Officer at Vazhapadi village and was a witness to the Observation Mahazar [Ex.P3] and Seizure Mahazar [Ex.P4]. P.W.17 is the Assistant in the office of Village Administrative Officer, Chendrapalayam, and he is also a witness to the Observation Mahazar [Ex.P3] and Seizure Mahazar [Ex.P4]. P.W.18 is the Village Administrative Officer at Vellalagundam village, Vazhapadi Taluk, to whom A1 and A2 are said to have given Extra Judicial Confessions on 19.02.2014 at about 7.00 p.m. The Extra Judicial Confessions were marked as Exs.P5 and P6, respectively. P.W.19 is the postmortem Doctor, who issued the postmortem certificate [Ex.P17] and the final opinion [Ex.P20]. P.W.20 is the headmaster of Ramanathapuram, Panchayat Union Primary School [ஊராட்சி ஒன்றிய தொடக்கப் பள்ளி] and has stated that the date of birth of the deceased is 24.03.2004.



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

WEB COPY

9. P.W.21 is the younger sister of the deceased, who stated that the accused were known to her; that they bought their uncle's house which is next to their house, and used to visit that house. She was ten years old when she deposed. P.W.22 is the brother of the deceased and had deposed that he knew the accused; that he had seen the accused consuming liquor at Mariamman Temple and had seen A1 patting the back of the deceased and pinching the cheeks of the deceased; that he had complained about the same to his father; and that his father/P.W.11, had warned the deceased not to play in the play ground and not to accept any snacks offered by A1. P.W.22, further would add about the missing of his sister on the night of 14.02.2014. P.W.23 is the forensic science expert who issued Ex.P22 report. P.W.24 is another forensic science expert who issued Exs.P23 and P24 certificates. P.W.25, the DNA expert, who had given Exs.P25 and P26 certificates had stated that semen could not be detected in the dress materials of the deceased; that the blood stains contained in the cotton swab and the Vaginal Smear were compared, and they belonged to the same individual namely the deceased. P.W.26 to P.W.28 are the head constables



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

who assisted the investigation. P.W.29 is a forensic science expert, who issued the reports [Exs.P29 and P30] and stated that there were blood stains in some of the material objects, including the knife and the dress materials of the accused, and they belonged to the “A” group. P.W.30 is the Investigating Officer, who conducted the investigation for a day and then handed over the investigation to P.W.31.

10. P.W.31, took up investigation from 16.02.2014 and filed the Final Report. P.W.32 is the Doctor who conducted a potency test on the accused and issued Ex.P56 to Ex.P58 certificates. He had also observed that the accused [A1, A2 and A4] had injuries on their private parts at the “frenulam area.” P.W.33 was working as a Bench Clerk in the Mahila Court, Salem, and had spoken about the initials made by the learned Judge and the dates on which the documents were received in Court.

11. The accused had examined three witnesses on their side. D.W.1 is the father of A4 and A5, who had stated that A4 and A5 were working



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

elsewhere and had nothing to do with the offence. D.W.2 is known to A4 and A5 and had stated that A4 and A5 were innocent. D.W.3, who was examined by A1 to show that he owned the house next to the house of P.W.1. However, in the cross examination, he would admit that he had sold the properties to A1's father, and the property was in the possession of A1 and others.

12. The prosecution has established the fact that the deceased was found hanging in a Neem Tree on 15.02.2014. The defence has not disputed this fact. P.W.19, the postmortem Doctor, had found several anti-mortem injuries on the deceased. She had also noted that the deceased had suffered the following injuries, as stated as follows:

Genital Examination: *Both sides of labia minora contused with laceration over fourchette M-I X 0.8 X 0.5 cms laceration seen on the inner aspect of right side labia majora M - 1 cm X 0.5 cm X 0.5 cm, Hymen not intact.*

In her final opinion, the Doctor had stated as follows:



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

“The Deceased would appear to have died of ASPHYXIA DUE TO COMPRESSION OF CHEST and NECK WITH EVIDENCE OF SEXUAL ASSAULT”.

The above would show that the prosecution has established that the deceased had suffered sexual assault and a homicidal death.

13. However, it is seen that the prosecution sought to establish the involvement of the accused through circumstantial evidence and relied upon the following circumstances besides the Extra Judicial Confession given by A1 and A2 [Exs.P5 and P6] to P.W.18.

(a) The recovery of the waist cord of the deceased on the confession of A1 from his possession.

(b) A1 and others were in the habit of consuming liquor, and A1 had on earlier occasions committed sexual assaults on the deceased.

(c) The injuries on the private parts of the accused [A1, A2 and A4] and the deposition of the Doctor that it could be caused by forceful sexual intercourse with the girl who was not fully grown up.



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

(d) The accused are neighbours and were last seen with the deceased at midnight on 14.02.2014.

(e) The conduct of A1 in misleading P.W.1 when they were in search of the deceased.

(f) The non explanation of injuries in the private parts during their questioning under 313 of the Criminal Procedure Code.

14. The primary evidence relied upon by the prosecution, therefore, is the Extra Judicial Confession given by A1 and A2 to P.W.18, the Village Administrative Officer, on 19.02.2014 at about 7.00 p.m. Admittedly, P.W.18 was a stranger to the accused. P.W.18 is not the Village Administrative Officer of the place where the accused were residing. The prosecution has not explained why A1 and A2 gave a confession to a total stranger. Though P.W.18 would state that the accused approached him fearing harassment and torture by the Police, the said version appears to be artificial. P.W.18 in his cross examination would admit that he came to know that the Deputy Superintendent of Police, Vazhapadi, was investigating the offence and wrote a letter to the Deputy



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

Superintendent of Police saying that the accused had appeared before him and had given a confession. The evidence of P.W.18 in our view, does not inspire confidence and hence, the Extra Judicial Confession can neither be said to be voluntary nor truthful. Another aspect that makes the Extra Judicial Confession highly doubtful is the fact that many of the witnesses have admitted that the accused, along with several people in the village, were taken into custody on 15.02.2014 on suspicion. P.W.1 would state that he came to know that the accused were taken into custody on the same day.

The relevant portion reads as follows:

“எதிரிகள் எல்லாரையும் போலீஸ்சார் என் மகளின்
உடல்கிடைந்த அன்றே பிடித்து சென்றுவிட்டார்கள் என்றால்
எதிரிகளை கைது செய்துவிட்டதாகவும், அவர்களுக்கு டிரஸ்
எடுத்து போவதற்காக வந்திருப்பதாக கேள்விப்பட்டேன். அது
என் மகள் இறந்த அன்றா, அல்லது அடுத்தநாளா என்று
நினைவில்லை.”

P.W.3, the nephew of P.W.1 and P.W.2 would also state that all five accused were arrested two days after the body of the deceased was found.

The relevant portion of P.W.3's evidence reads as follows:



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

“இரண்டு நாட்கள் கழித்து வந்து எதிரிகள் ஐந்து
கைது செய்து கொண்டு போனார்கள்.”

P.W.9, whose involvement was initially suspected by the Police, also confirmed that the accused were taken into custody, even before their arrest was allegedly made on 19.02.2014. The relevant portion reads as follows:

“எங்கள் ஊரில் உள்ள ஒரு அம்பது பேரை
வாழப்பாடி காவல்நிலையத்திற்கு, காரிப்பட்டி காவல்
நிலையத்திற்கும் அழைத்துச்சென்று விசாரித்தார்கள்
என்றால் சரி என்னை காரிப்பட்டி காவல்நிலையத்திற்கு
கூட்டிப்போய் விசாரித்தார்கள் என்றால் சரி எதிரிகளை
வாழப்பாடி காவல்நிலையத்திற்கு கூட்டிப்போய் விசாரித்தார்கள்
என்றால் சரி அன்றையிலிருந்து எதிரிகள் யாரையும்
வாழப்பாடி போலீசார் வெளியில் விடவில்லை.”

D.W.2 is a villager, who was working as the headmaster of a school, and he would state that on 15.02.2014 about 20 to 30 people including the accused, were taken into custody, and ultimately the Police filed the case against the accused. The relevant portion of the chief examination of D.W.2 [Headmaster] reads as follows:



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

“2014ம் வருடம் பிப்ரவரி மாதம் 15ம் தேதி காலையில்
பூங்கொடி என்ற பெண் இறந்துவிட்டார். அது சம்மந்தமாக
விசாரிப்பதற்காக எதிரிகள் அனைவரையும், மற்றும் இன்னும்
நிறைய பேரை மொத்தம் 20, 30 பேரை வாழப்பாடி
போலீஸ்சார் கூட்டி போனார்கள். அதன்பிறகு எதிரிகள்
5 பேர் மீது கேஸ்போட்டுவிட்டார்கள்.”

15. All the above evidence raises a substantial doubt with regard to the prosecution case that the accused A1 and A2 were arrested on 19.02.2014. It is also in the evidence that the accused were in the same village assisting the family members, in search of the victim, though it is the prosecution case that the accused did so to mislead the prosecution witnesses. However, we are of the view that, considering the evidence of the witnesses that the accused were taken into custody along with several others immediately after the body of the deceased was found, the alleged Extra Judicial Confessions are not believable and no reliance can be placed on the same.

16. Consequently, since the arrest is doubtful, the confession and



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

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recovery also cannot be believed. Further, P.W.1 would admit in the cross examination that he did not buy the waist cord [M.O.5] which is said to have been recovered from the possession of A1. There is no reference to taking of the waist cord by A1 in the alleged extra judicial confession. That apart, a doubt was raised by the defence as regards the date and seizure (Ex.P8) of the waist cord. Ex.P8 is said to have been prepared on 20.02.2024. It is seen from Ex.P8 - Seizure Mahazar, that there is an initial on 19.02.2014. The prosecution sought to examine P.W.33 [Court Clerk] as an additional witness. He was questioned on this aspect. P.W.33 admits that in Ex.P8, there are three initials dated 19.02.2014, 29.05.2014 and 24.06.2014; and that the initials made on 24.06.2014 and 29.05.2014 were that of the learned Judge and he does not know who initialed on 19.02.2014. P.W.33 accepted that the initial in Ex.P.45, was that of the learned Judge. The comparison of the said initials in Ex.P45 with the initials in Ex.P8 dated 19.02.2014 suggest that it is of the same person. Even assuming that the date has been mentioned by mistake as 19.02.2014 in Ex.P8, we find that in some of the documents, these dates have been



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

corrected by the learned Judge as 20.02.2014 and in some of the documents, it is left as 19.02.2014. Therefore, this discrepancy in the dates cannot be ignored as a mistake. This also raises suspicion with regard to the recovery and the manner in which the documents were prepared.

17. As regards the previous bad character of A1, P.W.22, the brother of the deceased, had deposed that he had seen the accused A1 misbehaving with his sister and had complained to his father. However, P.W.1, the father of the victim, had not deposed about any such incident . That apart, P.W.22 had not stated the said fact to the Police. P.W.22 admitted in his cross examination that he had not told what he had deposed in Court to the Police on 15th and 16th of February 2014, when they had come for investigation. Therefore, P.W.22's evidence appears to be an afterthought, and if the family members had suspected the involvement of A1, there was no reason for the Police to apprehend 30 people in the village, after the occurrence.

18. That apart, we also note the admission made by P.W.1 in the



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

cross examination that they had protested before the Collector's Office under the leadership of Women Rights and Human Rights Organizations urging the police to prosecute the actual offenders. Though the date of protest is not clear, considering the evidence in this case that the accused were arrested immediately after the body of the deceased was found, we can infer that the protest took place only after the arrest of the accused, which suggests that the family members of the deceased and the others were unhappy with the investigation. We are conscious of the fact that this aspect by itself would not have any bearing if the prosecution had otherwise established its case beyond doubt.

19. As regards the injuries to the accused, it could be seen that the Doctor, in his reports, Ex.P.56 to Ex.P58, had opined as follows:

“Opinion : There is nothing to suggest that he is impotent, with evidence of injury over the penis.”

In the said opinion, the Doctor had not stated that the injuries could have been caused by forcible sexual intercourse with a girl who is not fully grown up. However, for the first time, in his deposition, the doctor would



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

state so. Be that as it may. The Doctor/P.W.32, however, would state that these injuries could have been caused one week before his examination on 06.03.2014. The occurrence took place nearly twenty days before the examination. Further, we find that the medical examination of the accused was conducted belatedly. If the Investigating Officer is of the opinion that a medical examination of an accused in a sexual offence case, would offer evidence, he ought to have taken efforts to conduct the medical examination immediately after arrest. In this case, the medical examination was conducted nearly 17 days after the arrest. Therefore, we are of the view that the injuries on the private parts of the accused noted by P.W.32 is of no avail to the prosecution. Hence, we are unable to accept the submissions of the learned Additional Public Prosecutor that non-explanation of the injuries would be an additional link in the chain of circumstances.



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

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20. The other circumstances that A1 and others attempted to mislead and therefore, their conduct should be treated as circumstances in the chain of circumstances can be accepted, provided the other links in the chain of circumstances are proved conclusively. This circumstance, in isolation, cannot be put against the accused.

21. We may note here that the prosecution case with regard to how the victim left her house is also not acceptable. P.W.1 would state that the accused were living next to their house and there was no door in their house, and they had only a cloth screen. To a specific question, P.W.1 would state that he told the Police and stated in the complaint that his house only had a screen and not a door. However, P.W.30, the Investigating Officer, would state that P.W.1 had not informed him during the investigation or during the inquest that the house did not have a door. In our view, P.W.1's deposition in this regard is also an improvement which makes his evidence doubtful. It is also seen that the circumstance of last seen has also not been established, as all the witnesses, who were



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

examined by the prosecution to prove the said circumstance have turned hostile.

22. We find that the victim in this case has been abused sexually and done to death in a gruesome manner and unfortunately we are unable to hold any person guilty of the offence in view of the evidence on record. It is trite that suspicion howsoever high cannot take the place of proof. Hence, the Judgment of the Trial Court is liable to be set aside

23. Accordingly, the Criminal Appeals filed by A1, to A5 stand allowed. The conviction and sentence imposed upon the appellants/A1 to A5 in S.C. No.1 of 2014 dated 21.03.2019 on the file of the learned Sessions Judge, Mahila Court, Salem, are set aside. The appellants/A1 to A5, are acquitted of all charges and are directed to be released forthwith, unless their presence is required in connection with any other case. The fine amount, if any, paid by the appellants/ A1 to A5, shall be refunded. Bail bonds, if any, executed shall stand discharged. Consequently, the connected



Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

Criminal Miscellaneous Petition, is closed.

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(M.S.R.,J.) (S.M.,J.)
17.04.2024

Index : Yes/No
Neutral citation : Yes/No
dk

Copy to:

- 1.The Sessions Judge,
Mahila Court, Salem
- 2.The Additional District Superintendent of Police
Vazhapadi Police Station,
3. Deputy Superintendent of Police
Vaazhapadi Police Station,
Salem.
4. The Superintendent of Prisons
Central Prison, Salem.
5. The Public Prosecutor
High Court of Madras,
Chennai – 600 104.



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Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

dk

Pre-delivery Common Judgment in
Crl.A.Nos.323, 307, 315, 480 of 2019
and
Crl.M.P.No.7553 of 2021

Dated: 17 .04.2024