

Crl.A.Nos.313 of 2019 & 112 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2024

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CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

Crl.A.Nos.313 of 2019 & 112 of 2021

Madhu @ Madhiyazhagan ...Appellant in Crl.A.No.313/2019

Kiruthika ...Appellant in Crl.A.No.112/2021

Vs.

State represented by,
The Inspector of Police,
Perumanallur Police Station,
Tiruppur District.

...Respondent in both appeals

Common Prayer: Criminal Appeals filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment and order passed on the appellants/accused by the II Additional District and Sessions Judge, Tiruppur made in S.C.No.132 of 2017 dated 02.03.2019 and to acquit the appellants.

For Appellants : Mr.C.Prabakaran (Crl.A.No.313/2019)

: Ms.Gayathri Vasudevan
for Ms.S.Sumathy (Crl.A.No.112/2021)

For Respondent : Mr.A.Gokulakrishnan,
Additional Public Prosecutor (both appeals)



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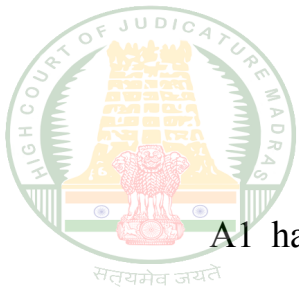
Crl.A.Nos.313 of 2019 & 112 of 2021

COMMON JUDGMENT

(Judgment of the Court was made by M.S.RAMESH, J.)

For the sake of convenience, the parties in the appeal are addressed according to their ranks in the trial Court.

2. The brief case of the prosecution is that A1-Madhu @ Madhiyazhagan, and A2-Kiruthika, were in love with each other since their school days. Subsequently, A2 entered into a matrimonial relationship with the deceased Kesavan, and two children, namely Nikvin and Nikhilesh, were born out of the said wedlock. Despite this, both the accused continued their illicit relationship and along with the children, started residing in Mettupalayam. A complaint regarding the same was lodged by the deceased Kesavan, which led to an investigation. During the course of the said investigation, it came to light that A2 did not wish to cohabit with the deceased and had taken shelter at Marialaya, a home for women and children. Thereafter, A2 moved in with her parents. Subsequently, she had sent a message to A1 stating that unless the deceased Kesavan was done away with, they would not be able to live in peace and thereby instigated him to commit his murder. Acting upon the said message, in the midnight hours of 29.06.2017, at around 12:30 a.m.,



A1 had entered the house of the deceased, which was kept unlocked.

Upon noticing that the deceased was asleep, he had stepped out, procured a large stone lying adjacent to the house, and thereafter hurled the same upon the head of the deceased, thereby causing his death. The Brother-in-law of the deceased gave the complaint on 30.06.2017 at 1:30 a.m. to the Sub Inspector of Perumanallur Police Station, Tiruppur District who registered an FIR No. 281/2017. On completion of the investigation, the Investigating Officer filed the final report.

3. After perusal of the documentary evidence before it, the trial Court had framed charges against A1 for the offences under Sections 449 and 302 IPC and A2 with the offences under Sections 302 r/w 109 of IPC. When these charges were read over and explained to the accused, A1 and A2 pleaded “not guilty” of the charges. Accordingly, the case proceeded for trial.

4. Before the trial Court, the prosecution had examined 29 witnesses P.W.1 to P.W.29 and marked 42 documents Exs.P.1 to P.42, apart from the material objections M.O.1 to M.O.18. No witnesses or documents were marked on the side of the accused.



5.1. The evidences let in by the prosecution before the trial Court are as follows:-

5.2. P.W.1, namely Murali, is the brother-in-law of the deceased. According to P.W.1, between 12:00 a.m. and 12:45 a.m., the mother of the deceased had knocked on his door and informed him that A1, Madhiyazhagan, had thrown a stone at the head of the deceased and fled the scene. Upon hearing this, P.W.1, along with his wife (the sister of the deceased), rushed to the place of occurrence and found the deceased lying in a pool of blood, with grievous injuries on his head. When P.W.1 reached the house, Nikhilesh, the child of the deceased, informed him that A1 had thrown a stone at his father and had absconded. P.W.1 further stated that he was aware of the illicit relationship between A1 and A2 through his wife, though he had not directly witnessed the occurrence. He further deposed that A2, along with her children, had eloped to Mettupalayam, which was revealed during the course of the investigation based on a complaint lodged by the deceased Kesavan. It also came to light that A2 was unwilling to cohabit with the deceased and had initially taken refuge in a Home for Women and Children before later moving in with her parents. During the week of the occurrence, when the deceased had taken his children to the hospital, A1 had intercepted him and issued

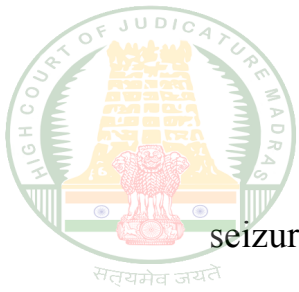


threats of murder. The same was conveyed by the deceased to his mother and sister. Thereafter, on 29.06.2017, the alleged crime took place, following which, at around 1:30 a.m., an FIR was registered at the concerned police station. Subsequently, at around 2:30 a.m., the police arrived at the scene of occurrence and commenced the investigation.

5.3. P.W.2, namely Jothimani, is the neighbor of the deceased. According to P.W.2, at around 12:00 to 12:30 a.m., upon hearing the distressful cries of the mother of the deceased, P.W.2, along with her husband, rushed to the place of occurrence. There, they found the deceased lying in a pool of blood with a grievous head injury, and a large stone was found next to him.

5.4. P.W. 3, namely Nikhilesh, is the son of the deceased and A2. He states that A1 threw a stone at his father/the deceased and because of which he died. He identifies A1 and A2.

5.5. P.W.4, namely Sukumar, is one of the mahazar witnesses in whose presence the Investigating Officer had prepared the observation mahazar (Ex.P.2) and Rough sketch. He had also witnessed the seizure of the stone (M.O.1), a portion of the floor mat (M.O.2), a white-colored red-striped shirt (M.O.3), a pillow (M.O.4), a shirt (M.O.5), and a blood-soaked cotton swab (M.O.6) from the scene of occurrence, under a



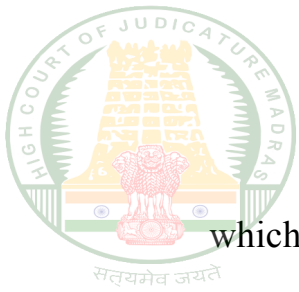
seizure mahazar (Ex.P.3).

WEB COPY 5.6. P.W.5, namely Victoria, is the manager of the Marialaya Home

for Destitute Women and Children. According to her, A2 was brought to their shelter by the police on 21.02.2017. Subsequently, on 23.02.2017, A2 expressed her unwillingness to continue her stay at the shelter. Based on her request, and after duly informing the police, she was allowed to leave with her mother and sister upon providing her written consent. Further, on 03.07.2017, upon being inquired by the police, P.W.5 provided a written statement regarding the two-day stay of A2 and handed the same over to the police which is marked as Ex.P.4.

5.7. P.W.6, namely Sivasami, is the owner of the house in Mettupalayam where A1 and A2 had resided. He deposed that A1 and A2, along with the children, had stayed at his house in Mettupalayam for approximately eight days before they were interrogated by the police.

5.8. P.W.7, namely Chandramoorthy, is the Assistant Executive Engineer at Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO). At the time of the occurrence, he was serving as an Assistant Engineer at the Perumanallur office. He denied the suggestions regarding the existence of power cuts during the time of the incident. He further submitted a report to the police confirming the same,



which has been marked as Ex.P.5.

WEB COPY 5.9. P.W.8, namely Thiagaraj, has a grocery shop in the neighborhood. According to him, on the date of occurrence when he came out to answer nature's call, he witnessed A1 walking out of the direction of the house of the deceased in a very distressed manner.

5.10. P.W.9, namely Raja, was the Village Administrative Officer of Tirupur Taluk. According to him, on 29.06.2017, at about 04:15 a.m., the Perumanallur Police visited his office and requested him to accompany them, as the accused in the murder case had been arrested and was being held at the Ramachandrapuram Samathuva Samuthaya Koodam. At the community center, at around 04:30 a.m., A1 voluntarily gave a confession regarding the murder. During the confession, A1, of his own accord, produced two cell phones, which were marked as M.O.7 and M.O.8 respectively, and the same were recovered under a Seizure Mahazar (Ex.P.6). Pursuant to the confession statement, the accused led them to the location where a jeans pant and a half-sleeved shirt were recovered, which were marked as M.O.9 and M.O.10 and recorded in Seizure Mahazar (Ex.P.7). Further the admitted portions from the Voluntary confessions of A1 are recorded under Ex.P.8. Thereafter, A1 took them to the residence of A2, where she was arrested and gave her



confession statement. Subsequently, two cell phones, marked as M.O.11 and M.O.12, were recovered under the Seizure Mahazar (Ex.P.9). And the admitted portions from the Voluntary confessions of A2 was marked as Ex.P.10.

5.11. P.W.10, namely Pravin Prabhu, is a relative and an auto driver in the vicinity. He deposed that he had witnessed A1 wearing jeans pants and a checked shirt, walking out of Mariyapuram in a hurried manner.

5.12. P.W.11, namely Senthil, is the brother-in-law of the deceased. He deposed that upon reaching the scene of occurrence, his mother-in-law informed him about the death of the deceased. Further, the elder son of the deceased stated that A1 had thrown a stone at his father, causing his death. He also deposed that prior to the occurrence, the deceased had informed him about his wife and children going missing and the subsequent police investigation that followed.

5.13. P.W.12, namely Rathinam, is the mother of the deceased. According to her, there was an illicit relationship between A1 and A2, which led them to reside in Mettupalayam. The deceased had filed a police complaint regarding the same, pursuant to which the police brought A2 back. However, A2 expressed her unwillingness to cohabit



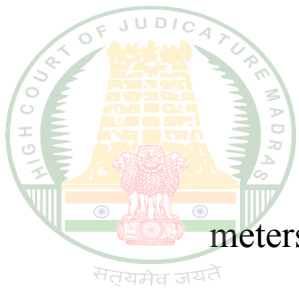
with the deceased and instead stayed with her mother. Further, on the day of the occurrence, while she was sleeping in another room, she was awakened by a sudden noise. Upon coming out, her grandson informed her that Madhiyazhagan had thrown a stone at his father. She saw the deceased lying in a pool of blood. She further deposed that while leaving, Madhiyazhagan turned around and looked at her.

5.14. P.W.13, namely Balasubramaniam, was the temporary employer of A1. He deposed that the cell phone numbers, which were subsequently seized by the police, belonged to A1, as he used them to contact him regarding construction work.

5.15. P.W.14, namely Muruga Bhoopathy, photographer who took the photographs of the body of the deceased. On 29.06.2017 about 2:30 a.m. he was called by the police to take some pictures of the murder crime scene, which pictures M.O.13 were marked as Ex.P.11.

5.16. P.W.15, namely Megul Patel, is the owner of a tiles and granite shop. He testified regarding the two cell phone numbers of A2, which she had given when she sought employment from him.

5.17. P.W.16, namely Kishore Kumar, was the 'Irandam Nilaya Kaavalr' working in the dog squad. He stated that the sniffer dog, after being deployed at the scene of occurrence, tracked a trail for about 30



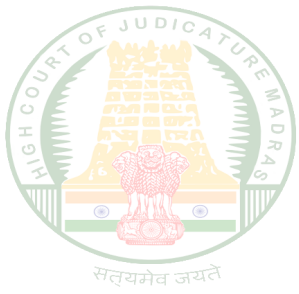
meters around the house and ultimately led to the accused. The same is recorded in Ex. P. 12.

5.18. P.W.17, namely Balachander is the Police Constable who took the body of the deceased for postmortem. From the body of the deceased, he had recovered a Kaavi dhoti (M.O.14), blood stained baniyan (M.O.15) and blood stained under garment (M.O.16).

5.19. P.W.18, namely Ramar, is the Police Officer who investigated the complaint regarding the missing of A2 and her children. He testified that a complaint was registered under [Crime No. 20/2017], which was marked as Ex.P.13, and the subsequent CSR was marked as Ex.P.14. He further stated that during the investigation, A2 and her children were found residing in Mettupalayam along with A1, following which A2 was reunited with the deceased.

5.20. P.W.19, namely Venkateswaran, is the junior forensic science expert. He examined the blood-stained objects and submitted his report, which is marked as Ex.P.15.

5.21. P.W. 20, namely Dr. Nalina, Joint Directir is the Forensic Scientific Officer. She had examined the blood-stained objects and submitted her report (Ex.P.16), which was sent to the Magistrate and the death report of Coimbatore hospital, which is marked as Ex.P.17.



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5.22. P.W.21, namely Vedhagi, is a retired forensic expert [computer department]. She deposes the information regarding the cell phone details alleged to have belonged to the Accused. She deposes as to the fact that the number 7502607670 is recorded as Uyer and 918525836143 is recorded as Keppu mari. The third number 7867828205 is recorded as Uyer and the text exchange on 24.06.2017 - 26.06.2017 that has been received by the number is recorded as Uyer. The CDR details were marked as Ex.P.18 and Ex.P.19.

5.23. P.W.22, namely Gokulnath, is the alternate nodal officer for Vodafone. According to him two cell phone numbers were sent to him for information under Section 65B of Indian evidence act. Based on the same, he had given details of the number 7867828205 belonging to one Madhu, 2/117, Avinashi Taluk, Mariyapuram, Tirupur. The call records for the same are marked as Ex.P.22. Ex.P.23 is the prepaid customer application form, which is under the name of Madhu. One 8525836143 number belongs to Ramlal, 13 Vijaya Nagar, Jothipuram, Coimbatore. The certificate for the same is marked as Ex.P.20 and the call records are marked as Ex.P.21.

5.24. P.W.23, is the Judicial Magistrate, who had recorded the statement of P.W.1, P.W.12 on 07.07.2017, the statements of which were



marked as Ex.P.24.

WEB COPY 5.25. P.W.24, namely Mogan Kumar is the Grade-II Police Constable, who took the cell phones from Judicial Magistrate-IV and submitted it to Chennai Forensic department.

5.26. P.W.25, namely, Santhanam, police officer in cyber crime department who had dispatched the seized cellphones to the respective nodal officers.

5.27. P.W.26, is the alternate nodal officer of airtel. He gave details regarding numbers 7502607670 and 7502327268 as per Section 65B of the Indian evidence act which is marked as Ex.P.27.

5.28. P.W.27 is the Police Officer who investigated the missing complaint by deceased. Based on the complaint, a search was conducted and both the accused were found living together in Mettupalayam. After informing the same to the deceased, since he did not want to press the complaint, further investigation was dropped and the same was marked as Ex.P.29. The letters obtained from A1 and A2 were marked as Ex.P.30 and Ex.P.31 respectively.

5.29. P.W.28 is the doctor who conducted the postmortem and issued the postmortem certificate, which is marked as Ex.P.35. Additional certificates such as the accident register (Ex.P.34), the toxicology report



(Ex.P.36), the final opinion (Ex.P.37), and the blood grouping (Ex.P.38)

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5.30. P.W.29 is the Investigating Officer who commenced the investigation upon receipt of the FIR. He reached the scene of occurrence at approximately 2:30 a.m. and prepared a rough sketch and observation mahazar, which is marked as Ex.P.39. He subsequently prepared the seizure mahazar, under which a 20 kg stone, blood-stained floor mat, blood-stained pillow, blood-stained half-sleeved shirt, and other material objects were seized. The inquest report was then prepared and marked as Ex.P.40. Upon completion of the postmortem, the body was handed over to the family, and the statement of the officer who participated in the postmortem was recorded. Pursuant to his investigation and witness statements, A1 was arrested. In the presence of the VAO, A1 voluntarily confessed to committing the murder on account of of his illicit affair. Following this, mobile phones were seized, and a seizure mahazar was drawn up with the signatures of witnesses. Based on his confession, the clothes worn by A1 at the time of the murder, which had been concealed, were recovered, and a mahazar was duly prepared. Subsequently, A2 was arrested in the presence of a female police officer. Upon recording her confession, three mobile phones without SIM cards were seized, and

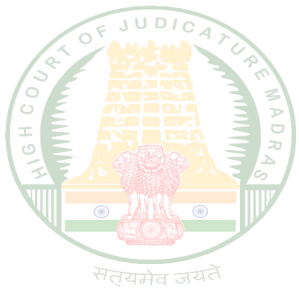


their IMEI numbers were noted. On conclusion of the investigation, he prepared the final report, which was marked as Ex.P.41. Upon conclusion of the investigation, A1, Madhu @ Madhiazhagan, was charged under Section 449 r/w 203 IPC, while A2, Krithika, was charged under Section 302 r/w 109 IPC."

6. When A1 and A2 were questioned about the incriminating circumstances from the evidence put forth by the prosecution under Section 313(1)(b) Cr.P.C., they had pleaded 'not guilty' and that the case needs to be adjudicated upon.

7. On the strength of the oral and documentary evidences before the Trial Court, both the accused were found guilty for the charged offences and were sentenced to imprisonment in the following manner:-

<i>Rank of the Accused</i>	<i>Offences</i>	<i>Sentences imposed</i>
A1	302 IPC	Life imprisonment together with a fine of Rs.5,000/-, in default to undergo 6 months rigorous imprisonment
	449 IPC	10 years rigorous imprisonment, together with a fine of Rs.5,000/-, in default to undergo 6 months rigorous imprisonment
A2	302 r/w 109 IPC	Life imprisonment together with a fine of Rs.5,000/-, in default to undergo 6 months rigorous imprisonment

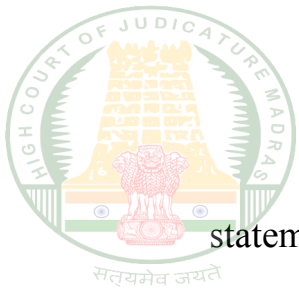


8. The aforesaid judgment of the Trial Court passed in S.C.No.132

of 2017 on the file of the II Additional District and Sessions Judge, Tiruppur, dated 02.03.2019, has been challenged by both the accused in these appeals. Since both these appeals arise out of a common judgment, they are disposed of through this common judgment.

9. The learned counsel appearing on behalf of both the accused submitted that apart from the evidence of P.W.3, there are no other eye witnesses to the alleged occurrence. Since P.W.3 was only aged about 3 years and has not spoken much in his deposition, except for a vague statement that A1 threw a stone and made his father reach God. Apart from P.W.3, P.W.1 and P.W.12 are the family members of the deceased and are not eye witnesses. All other witnesses are only hearsay witnesses and do not support the prosecution's case. He further submitted that the prosecution has not proved the alleged illegal affair between A1 and A2 beyond reasonable doubt.

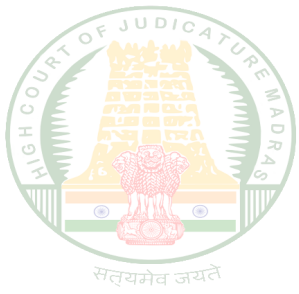
10. On the other hand, the learned Additional Public Prosecutor submitted that P.W.3, though a child witness, was admittedly present in the house of the deceased and had witnessed the occurrence. His



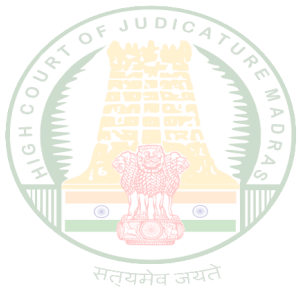
statements are corroborated from the evidence of P.W.28, who is the

Postmortem Doctor who had certified that *“the deceased had died of Shock and Hemorrhage due to Cranio Cerebral injury. The time of death was 12 to 24 hours prior to autopsy”*. The Postmortem Certificate (Ex.P.35) also records severe crush injuries on the skull of the deceased. Insofar as the motive is concerned, the learned Additional Public Prosecutor would submit that the frequent phone calls between A1 and A2 has been established through the call detail records (CDR) of both of them. The CDRs have been properly proved through P.W.22, who is the Nodal Officer of A1 and P.W.26, who is the Nodal Officer of A2. Since these electronic records were duly supported by Certificates under Section 65B of the Indian Evidence Act, 1872 (Ex.P.26 and Ex.P.27), the Trial Court had rightly placed reliance on these call records for establishing the guilt of the accused. He also placed reliance on the text messages (Ex.P.18) sent by A1 to A2, where A1 had specifically implicated A2 by texting her that he had killed the deceased on A2's request.

11. We have given our anxious consideration to the submissions made by the respective counsels.



WEB COPY 12. The only motive attributed by the prosecution on both the accused of having committed the crime is that A1 and A2 were in an illicit relationship and the presence of the deceased in their relationship was causing inconvenience to them. In order to prove the motive, the prosecution examined P.W.1, who is the brother-in-law of the deceased. In his oral testimony, P.W.1 has narrated that whenever the deceased was not in the house, A2 had invited A1 to her house and both of them had continued with their intimacy. When the deceased came to know about their affair and had questioned A2, there arose a quarrel between them and A2 had left the matrimonial house. The deceased had given a complaint in this regard and after investigation, A2 was found living with A1 in a house along with her children. In view of the same, the complaint given by the deceased was also closed. This aspect was also spoken to by P.W.27, who is the Police Officer in-charge of the complaint of A2 missing from her house. The consent letter of the deceased in not pressing the complaint was also marked as Ex.P.28. The statements of A1 and A2 were recorded by P.W.27, which were marked as Ex.P.29 and Ex.P.30.

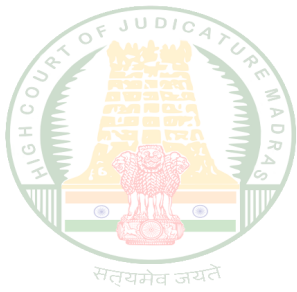


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13. This apart, the prosecution had come out with a clear case that both the accused were conversing among themselves through their mobile phones. Their call detail records (CDRs) were marked as Ex.P18 to Ex.P23 and these documents establish that there was continuous exchange of calls between A1 and A2. The CDRs were marked with a proper certificate obtained from Section 65B and were also proved through the oral evidence of P.W.22-Nodal Officer of Vodafone and P.W.26-Nodal Officer of Aircel. The records also reveal that, while the mobile phone from Vodafone belong to A1, Aircel Service Provider was to the phone of A2.

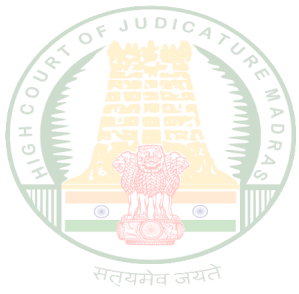
14. P.W.2 is the neighbour and a hearsay witness. In his oral testimony, he confirms that there was an illegal intimacy between A1 and A2, owing to which, there were frequent quarrels between A2 and the deceased.

15. P.W.12 is the mother of the deceased, who also speaks about the illegal affair between A1 and A2, the frequent fights between the deceased and A2 and the desertion of A2 from her matrimonial house and staying in a hostel.



WEB COPY 16. On an overall appraisal of these evidences, we have no difficulty in coming to the conclusion that there was indeed an illegal intimacy between A1 and A2 which had enraged the deceased, who picked up frequent quarrels with A2, which was the motive for A2 and A1 to have planned for the murder of the deceased.

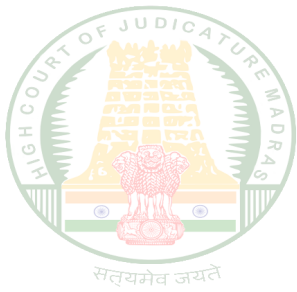
17. The case of the prosecution is that on 29.06.2017, when the deceased was lying down along with his two sons including P.W.3, A1, who had an illicit intimacy with A2/wife of the deceased, had thrown a large stone on the head of the deceased and thereby caused his murder. Apart from P.W.3, P.W.1, who is the brother-in-law of the deceased, in his testimony had narrated that, on 29.06.2017, when he had gone to the scene of occurrence on hearing the incident, P.W.3 had informed him that A1 had thrown a stone on his father's head. The presence of P.W.3 in the house, on 30.06.2017 at 12.30 a.m. has not been disproved by the defence in any manner. P.W.3 was 6 years old when the occurrence had taken place. It is the claim of the prosecution that P.W.3 had witnessed the entire scene and had implicated A1 of having committed the crime.



18. Insofar as the evidentiary value of a child witness is concerned,

Section 118 of the Indian Evidence Act, 1872 envisages that all persons shall be competent to testify unless the Court is of a contrary view. As long as a child witness is found to be competent to depose i.e., capable of understanding the question and able to give rational answers, the testimony of such witness can be considered as evidence, in terms of Section 118 of the Indian Evidence Act, irrespective of their tender age or absence of any oath, as held by the Hon'ble Supreme Court in the case of *Dattu Ramrao Sakhare and Others Vs. State of Maharashtra* reported in (1997) 5 SCC 341.

19. Likewise, in the case of *Ratansinh Dalsukhbhai Nayak Vs. State of Gujarat* reported in (2004) 1 SCC 64, the Hon'ble Supreme Court had observed that, though child witnesses are considered as dangerous witnesses, as they are pliable and liable to be influenced easily, shaken and moulded, yet it is an accepted norm that if after careful scrutiny, their testimony is found to inspire confidence and truthfulness, then there is no obstacle to accept the evidence of such child witness.

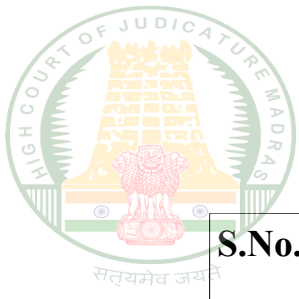


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20. In the instant case, the Trial Court had recorded the preliminary questions addressed to P.W.3 for the sake of analyzing his mental capability and thereafter recorded his evidence.

21. We have scrutinized the entire evidence of P.W.3 and found that the minor boy was in a stable mind and had answered the questions in both the chief and cross examinations in a cogent manner. To his specific statement that the accused had thrown a stone on his father and killed him, the defence could not contradict or discredit the witness. In this background, we are inclined to accept the evidence of P.W.3 of having witnessed A1 throwing a stone on the head of the deceased.

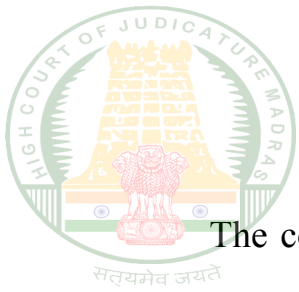
22. There is yet another piece of electronic evidence, which is the exchange of text messages between A1 and A2. While the sim bearing No.7502607670 belong to A1, the sim bearing No.8525836143 belong to A2. Annexure II of Ex.P.18 is the hard copies of the messages exchanged from the mobile phone of A1 to A2. Between 02.07.26 a.m. and 2.47.00 a.m. of 30.06.2017, the following texts were sent by A1 to A2:-



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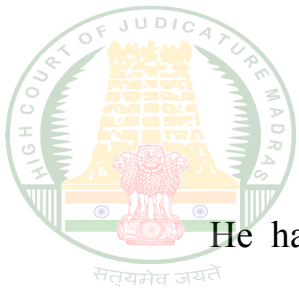
S.No.	Recipient Contact Number	Sent Message Body	Date & Time
1	8525836143	Kiruththiya pasankala pathirama paththukko da clm	30.6.17 02.47.00 AM
2	7502607670	Kiruththiya pasankala pathirama paththukko da clm	30.6.17 01.46.38AM
3	7502607670	Kiruththiya pasankala pathirama paththukko da clm	
4	8525836143	Nan ponen da clm inee avan unna onnum panna matdan da clm	30.6.17 02.14.13 AM
5	8525836143	Nee kola sonne nan konntden da clm	30.6.17 02.13.26 AM
6	8525836143	Clm avan unna kaluththa aruthuthuduvana da clm nan avana appadi panna vitduthuvena da clm kandiappa vida matden da clm nee kavala padathada clm paththukkiren da clm en uyer irukkum varai nan vida mateden da clm sariya da clm nee payakame santhosama iru da clm.	30.6.17 02.12.37 AM
7	8525836143	Nee kola sonne nan konntden da clm	30.6.17 02.07.26 AM



The contents of the hard copies of the text messages were substantiated through the oral evidences of P.W.26, who is the Nodal Officer of Aircel.

23. Likewise, P.W.21 is the Assistant Director of the Forensic Science Department. According to him, he had received one black colour Samsung mobile phone without sim card or battery cover. In another cover, he had also received one Nokia mobile phone with two sim cards but without memory card. In the third cover, the sim card and memory card of Samsung mobile phone was received. He had subjected these to forensic analysis and had given his report with regard to the exchange of the aforesaid texts between A1 and A2. Though P.W.1 was subjected to cross examination, the defence could not discredit his statements in any manner. Thus, the fact that the mobile No.7502607670 belongs to A1 and the mobile No.8525838143 belongs to A2 and that A1 had texted A2 that he had killed the deceased on the instructions of A2, stands substantially proved.

24. P.W.28 is the Doctor who had conducted the postmortem on the body of the deceased. According to him, he had received the body of the deceased on 30.06.2017 and had commenced the postmortem at 4.10 a.m.



He had recorded the ante-mortem injuries seen over the body in his

Postmortem Certificate (Ex.P35) in the following manner:-

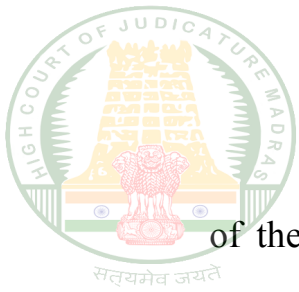
“The following ante mortem injuries seen over the body:

- 1. Face found deformed.*
- 2. Reddish abrasion with underlying contusion over an area of 12x10cm noted over both cheek, forehead and nose with multiple lacerations of 5x2cmxbone deep, 4x1cmxbone deep, 2x1cmxbone deep, 4x1cmxbone deep noted over both eyebrow, nose and lower lip. On dissection depressed comminuted fracture over an area of 12x10x0.5cm noted over both frontal, nasal and both maxilla bones.*

OPINION: The deceased would appear to have died of SHOCK AND HEMORRHAGE due to CRANIO CEREBRAL INJURY. The time of death 12 to 24 hours prior to autopsy.”

In his final opinion, he had recorded that the deceased would appear to have died due to Shock and Hemorrhage due to Carnio Cerebral injury between 12 and 24 hours prior to the autopsy.

25. From the evidences of P.W.3, which has been corroborated through the evidences of P.W.19 and P.W.20, who are the forensic experts



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of the electronic evidence, as well as P.W.22 and P.W.26, who are the Nodal Officers and had supplied the Call Record Details, we find adequate corroboration to the evidence of P.W.3.

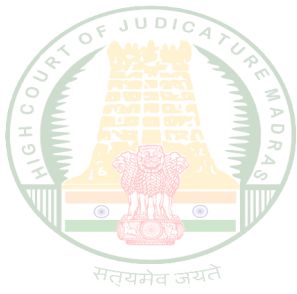
26. Thus, on an overall appraisal, we have no hesitation to hold that A1 and A2 were in an illicit affair and since the deceased was a disturbance to their affair, A2 had instructed A1 to murder the deceased. Based on A2's specific instructions, A1 had thrown a stone on the head of the deceased at 12.30 a.m. of 30.06.2017, thereby committing the crime of culpable homicide.

27. In view of this planned commission of the crime and the clinching evidences before it, the Trial Court had rightly convicted and sentenced both the accused to imprisonment, as detailed above.

28. We do not find any reason to interfere with the findings of the Trial Court. Accordingly, both the Criminal Appeals stand dismissed.

[M.S.R., J] [M.J.R., J]
18.10.2024

Neutral Citation: Yes/No
Speaking order/Non-speaking order
hvk



WEB COPY



Crl.A.Nos.313 of 2019 & 112 of 2021

M.S.RAMESH, J.
and
M.JOTHIRAMAN, J.

hvk

To

1.The II Additional District and Sessions Judge,
Tiruppur.

2.The Superintendent of Prisons,
Central Prison, Coimbatore.

3.The Inspector of Police,
Perumanallur Police Station,
Tiruppur District.

4.The Public Prosecutor,
High Court of Madras.

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18.10.2024