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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE **A.SELVAM**

and

THE HONOURABLE MR.JUSTICE **T.MATHIVANAN**

CRIMINAL APPEAL (MD) No.298 of 2013

and

MISCELLANEOUS PETITION (MD) Nos. 4 of 2014

Sudhakar @ Sudharasan

: Appellant/ Sole Accused

Vs.

State rep. by

The Inspector of Police,
Srirangam Police Station,
Trichy

(Crime No.22 of 2013).

: Respondent/ Complainant

Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973, against the order of conviction and sentence, dated 12.09.2013 recorded in the case in Sessions Case No.76 of 2013 on the file of the Sessions Judge (Sessions Division), Trichy.

For Appellant

: Mr.Veera Kathiravan

For Respondent

: Mr.C.Ramesh,

Addl. Public Prosecutor

ORDER RECEIVED DATE : 19.01.2015

ORDER DELIVERED DATED : 23.01.2015

JUDGMENT

(Judgment of the Court was made by **T.MATHIVANAN**, J)

The conviction and sentence, dated 12.09.2013 recorded by the learned Sessions Judge, Trichy (Sessions Division) against the appellant/accused in the Sessions Case in S.C.No.76 of 2013 are under challenge in this Memorandum of Criminal Appeal.

2.The appellant herein being the sole accused was tried for an offence under section 302 of IPC, which is simpliciter in nature and ultimately found guilty under section 302 of IPC, convicted thereunder on 12.09.2013 and sentenced to suffer life imprisonment and to pay a fine of Rs.1,000/-, in default to suffer a further period of six months of rigorous imprisonment.

3.Challenging the correctness of the judgment, the appellant stands before this court with this appeal.

<https://hcservices.ecourts.gov.in/hcservices/>
4.That on 19.03.2013, PW15, Inspector of Police, attached to Srirangam Police Station, Trichy City, had laid a final report on the file of the



learned Judicial Magistrate No.3, Trichy, as against the appellant alleging that he had committed murder of one Mariyayee, who is none other than his grand mother.

5.After taking cognizance of the offence and after completion of the preliminary enquiry, the case was committed to Court of Sessions at Trichy (Sessions Division) and thereafter, taken on the file of the learned Sessions Judge, Trichy, in Sessions Case No.76 of 2013.

6.On perusal of the records, the learned Sessions Judge had found that there were adequate grounds to proceed against the appellant and therefore, he had framed a charge under section 302 of IPC as against the appellant.

7.When the ingredients of charges were explained and questioned, the appellant had pleaded innocent and claimed to be triable and therefore, he was put on trial.

8.The prosecuting agency, in order to establish their case, had examined as nearly as 15 witnesses. During the course of their examination, Exs.P1 to P16 and the material objects M.Os.1 and 2 were marked.

9.The gravamen of the prosecution case is this:-

The appellant Sudhakar @ Sudharsan is none other than the grand son of deceased Mariyayee. She was residing at Neduntheru in Srirangam. The appellant has also been residing along with his mother and brothers in the same place, but in the opposite row. PW5, Maruthayee is the daughter of the deceased Mariyayee and wife of PW1 Jayaraj. PW6, Naresh Kumar is their son and they are residing at Poolangudi village in Pudukottai District. The appellant became addicted to drinking habit and therefore, he had been pestering the deceased Mariyayee to give him money for taking alcohol. Besides this, he had also been compelling the deceased Mariyayee to transfer her residential house in his name.

10.That on 16.01.2013 in the morning, when PW1 and PW5 came to the house of Mariyayee, the appellant also came there and demanded the deceased to part with money for drinking liquor. He had also demanded her to transfer her house in his name. He was pacified by PW1 and others and thereafter, he went away. On the next day i.e., on 17.01.2013, PW5 Maruthayee had been to Airport to see one Manohar and Kannan, who are none other than her junior maternal anut's sons.

11.At 11.00 a.m. on 17.01.2013, when PW1 was lying in the house of the deceased, who is none other than his mother-in-law, the appellant came there and quarrelled with the deceased Mariyayee demanding money for taking alcohol. Even at that time also, he was advised by PW1 suitably and thereafter, he went away.

12.At about 06.30 p.m. on the same day, when PW1 was sleeping in the adjoining room, Mariyayee was screaming as விடுடா விடுடா. When PW1 rushed there, he had found the appellant strangulating the neck of Mariyayee with his hands. When PW1 made shouting, the appellant had fled away from that place, after taking the Surukupai [A small bag made out of cloth for the purpose keeping money etc.] from the possession of the deceased.

<https://hcservices.ecourts.gov.in/hcservices/>

13.After hearing the noise of PW1, the neighbour of the deceased had rushed there and subsequently, PW1 had removed the deceased to ABC



Hospital in an Auto. While proceeding to Hospital, he had informed his wife through phone about the incident. When PW1 had reached ABC Hospital, PW5 had arrived well in advance and she only had admitted her mother in the Hospital at about 7.30 p.m.

14. PW8 Dr. Mohammed Ghouse Khan had examined the deceased. While so, he was informed by PW5 that her mother had fallen down and on account of that reason, the deceased was struggling for breathing. When she was examined by PW8, she was conscious, but found restless. Her BP was not recordable and Pulse rate was very feeble and therefore, Heart massage was given and necessary steps were taken to provide treatment. However, she had died at 7.55 p.m. and in this connection, PW8 had issued an Accident/Injury report, which was marked as Ex.P3.

15. At about 11.30 p.m., PW1 came to Srirangam Police station and lodged a complaint before PW15, Inspector of Police under Ex.P1. On receipt of that complaint, PW15 had registered a case in Crime No.22 of 2013 under section 302 of IPC. The printed FIR was marked as Ex.P12. Thereafter, Exs.P1 and P12 were sent to the learned Judicial Magistrate No.3, Trichy through PW13 and the copies of the same were also sent to the higher police officials. Then, PW15 had taken up the case for investigation and proceeded to the place of occurrence, inspected the same in the presence of PW7 Shankar and one Vasudevan and prepared an observation mahazar under Ex.P2 and also drawn a rough sketch under Ex.P13. Then, after completion of the inquest, the body of the deceased Mariyayee was sent to Trichy Medical College Hospital for postmortem examination with a requisition under Ex.P4 through PW14.

16. Ex.PW9 Dr. RVS Renugadevi, Assistant Surgeon had examined the dead body of the deceased Mariyayee. While so, she found the following internal and external injuries:-

(1) *Linear abrasions of varying lengths on the front of the neck & nail mark.*

(2) Contusion on the front of neck-Dark red. On bloodless dissection of neck: Bruising of soft tissues of neck- Dark red. Blood is diffused in to the soft tissues of neck. Fracture of thyroid cartilage and tracheal rings present. Inward compression fracture of greater horn at the junction with the body of hyoid bone present. Haemorrhagic spots present in the mucous, membrane of food pipe and wind pipe. Bruising of Oesophagus- Dark red.

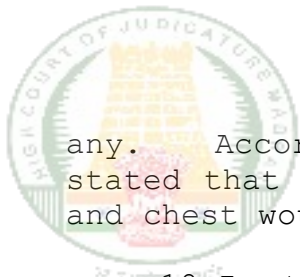
(3) Bruising of anterior chest wall - Dark red.

(4) Fracture of manubrium sterni transversely at the level of 4th rib attachment with surrounding area bruising - Dark red.

(5) Fracture of left collar bone, 1-5 left side ribs, 2-6 right side ribs with surrounding thoracic wall bruising - Dark red. Fluid blood present in the pleural cavity.

Other findings: Not necessary.

17. After the completion of postmortem examination, PW8 had issued a report under Ex.P5. During the autopsy, Viscera were preserved and sent for chemical analysis to find out the presence of alcohol or poison if



any. Accordingly, final opinion under Ex.P6 was received wherein it is stated that the deceased would appear to have died of compression of neck and chest wounds. Neither Alcohol nor other poison was detected.

18. In the meanwhile, PW15, had arrested the appellant at No.1 Toll Gate, Lalgudi Bus Stand in the presence of PW11 and PW12 when he was interrogated, he had voluntarily produced MO1.Surukupai and MO2 cash Rs.140/- which were recovered under the cover of a seizure mahazar Ex.P16. After the completion of investigation, PW15 had lodged a final report on 15.03.2013 before the learned Judicial Magistrate No.3, Trichy as stated in the opening paragraph.

19. When the incriminating circumstances arising from the testimonies of the prosecution, witnesses were put to the appellant, during the proceedings under section 313(1)(b) of Cr.P.C., while denying their testimonies, he had replied that the case was foisted against him. He had also filed his written statement by way of his defence under section 233 (2) of Cr.P.C. Besides this, he had also examined his mother-in-law one Mala as DW1.

20. She has stated in her evidence that at the time of occurrence, her daughter that i.e., the wife of the appellant came to her house for delivery and that on 16.01.2013 at about 08.00 a.m., the appellant came to her house and was staying there and on the next day at about 11.00 p.m., police people came from Srirangam Police station and took him for the purpose of enquiry. She has also stated that at the time of the alleged occurrence, the appellant was present in her house.

21. The learned trial Judge, on appreciation of the evidences, both oral and documentary, had concluded that the prosecuting agency had brought home the guilt of the accused and found the appellant guilty under section 302 of IPC, convicted and sentenced thereunder as afore-stated.

22. Heard Mr.Veera Kathirvan, learned counsel appearing for the appellant/accused and Mr.C.Ramesh, learned Additional Public Prosecutor appearing for the State.

23. It is a settled legal proposition that:-

"While appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the case of the prosecution, must not prompt the court to reject the evidence in its entirety. Therefore, unless irrelevant, details which do not in any way corrode the credibility of a witness should be ignored. The court has to examine whether evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view of the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter, and shake the basic version of the prosecution witness. Thus, the court must read the evidence of a witness as a whole, and consider the case in the light of the entirety of the circumstances, ignoring the minor



discrepancies with respect to trivial matters, which do not affect the core of the case of the prosecution. The said discrepancies as mentioned above, should not be taken into consideration, as they cannot form grounds for rejecting the evidence on record as a whole. This proposition has been laid down by the Apex court in *State of U.P. v M.K. Anthony* [(1985)1 SCC 505: 1985 SCC (Cri) 105: AIR 1985 SC 48, *State vs. Saravanan* [(2008)17 SCC 587: (2010)4 SCC (Cri)580: AIR 2009 SC 152] and *Vijay vs. State of M.P.* [(2010)8 SCC 191 : 2010(3 SCC (Cri) 639)].

24. In the light of the observations made by the Apex court in the above cited decision, we step into discussion to find out as to whether the learned trial Judge is wrong in his finding as argued by Mr. Veera Kathiravan, learned counsel appearing for the appellant.

25. In so far as the instant case on hand is concerned, PW2, PW3 and PW4, who are also said to be the eye witnesses, have not supported the case of the prosecution as they have deviated from the main track of prosecution story. However, PW2 Muruganandam, in his evidence before the trial court has added extra details, which are not available in his 161(3) Cr.P.C statement given before the Investigating Officer.

26. From his evidence on record, it has to be necessarily inferred that the presence of PW1 in the place of occurrence, when the occurrence was taken place is doubtful. But in fact, it is not so. In his, 161(3) Cr.P.C statement, PW2 has stated about the presence of PW1 Jayaraj at the time of occurrence, but entirely contrary to his statement before the Investigating officer, he has adduced evidence as if he along with the other witnesses viz., PW3 and PW4 had taken the deceased Mariyayee to Srirangam Government Hospital and that he was informed that PW1 and PW5 being the son-in-law and daughter of Maryayee, had been to Airport. Since the evidence of PW2 seems to be an improved version, no credence could be attached as it lacks the evidentiary value .

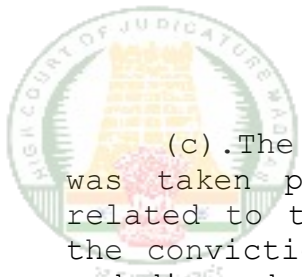
27. In so far as PW3 and PW4 are concerned, they have categorically stated that they did not know about the occurrence. Similarly, PW11 and PW12 viz. Srinivasan and Chozharajan, who were examined by the prosecuting agency for the purpose of supporting the arrest of the appellant and recovery of MOS 1 and 2, have also turned hostile leaving the evidence of PW15, the Investigating Officer. However, their hostile attitude does not falsify the case of the prosecution.

28. Under this circumstance, the entire edifice of prosecution story is rested on the evidence of PW1. The learned trial court has also believed the evidence of PW1 and PW5 and proceeded to find the appellant guilty under section 302 of IPC.

29. Mr. Veera Kathiravan, learned counsel appearing for the appellant/accused has advanced his argument on the five following grounds:-

(a). Motivation for the occurrence has not been established by the prosecution;

(b). The delay in lodging the complaint under Ex.P1 and the delay in reaching the FIR at the hands of the learned Judicial Magistrate No.3, Trichy, have not satisfactorily been explained by the prosecution.



(c).The presence of PW1 in the house of the deceased, when the alleged was taken place is reasonably suspected and since, PW1 being closely related to the deceased, his evidence could not be based for maintaining the conviction and therefore, his evidence ought to have been discredited and discarded.

(d).No independent witness was examined to lend assurance to the evidence given by PW1.

(e)If it is the case of strangulation, could there be a fracture of manubrium sterni transversely at the level of 4th rib attachment with surrounding area bruising as well as fracture of left collar bone, 1-5 left side ribs, 2-6 right side ribs with surrounding thoracic wall bruising and the fracture as afore stated as described in serial Nos.4 and 5 of Ex.P5, Postmortem Certificate would be the best evidence in favour of the defence to suggest that it is a case of all as represented by PW5 before PW8 and no strangulation as deposed by PW1.

30.As it is seen from the evidence of PW8, Dr.Mohammed Ghouse Khan, who had examined the deceased at first in the ABC Hospital at the earliest point of time. PW5 had represented that her mother (deceased Mariyayee) had fallen down. Even if it is presumed without admitting that PW5 was informed by her husband that the appellant had committed the murder of deceased Mariyayee, she would have disclosed the real fact before the Doctor viz., PW8 at the time of admission of the deceased. But, she had represented before PW8 that her mother had fallen down, which would go a long way to disprove the case of the prosecution and prove the innocence of the appellant.

31.As it is seen from the evidence of PW8, the deceased had succumbed to injuries at 7.55 p.m. and before that, she was struggling for breathing and also found restless, since it is a medico legal case, PW8 had not evinced any interest to send any information to the concerned police station. This circumstance has not been clarified or explained by the prosecuting agency.

32.Besides this, Mr.Veera Kathiravan, learned counsel appearing for the appellant/accused has also maintained that since all the material witnesses viz., PW2 to and PW4, who are said to be the eye witnesses for the occurrence, have not supported the case of prosecution and the credibility of the material evidence of PW1 is moonshine and shrouded with suspicion, the trial court ought to have acquitted the appellant after extending the benefit of doubt.

33.On the other hand, Mr.C.Ramesh, learned Additional Public Prosecutor appearing for the State has argued that after evaluating and assessing testimonies of the prosecution witnesses, the court below had correctly come to the conclusion that the prosecution had proved the charge under section 302 of IPC as against the appellant and found him guilty and convicted and sentenced as per the penal provision and therefore, he has urged that the unpeccable finding of the trial court did not require any interference and as such, the appellant might be dealt with in accordance with law.



34. We have analyzed and appreciated the evidences both oral and documentary, which are placed before us with very great caution. We have also considered the submissions made on behalf of both sides.

35. Having regard to the relevant facts and circumstances, we would like to place it on record the following:-

(i) **Argument relating to the absence of motive:-**

Motive for the commission of a crime may be a very relevant factor, but it is always relegated to the secondary place. However, it is the perpetrator of the crime alone, who is aware of the circumstances that prompted him to adopt a certain course of action, leading to the commission of the crime. If the evidence on record adequately suggests, the existence of the necessary motive required to commit a crime, it may be conceived that the accused had in fact, committed the same. [Seen; ***Subedar Tewari vs. State of U.P 1989 Supp(1) SCC 91 : 1989 SCC (Cri) 218: AIR 1989 SC 733, Suresh Chandra Bahri vs. State of Bihar 1995 Supp(1) SCC 80: 1995 SCC (Cri) 60 : AIR 1994 SC 2420 and Sunil Clifford Daniel vs. State of Punjab (2012) 11 SCC 205: (2013) 1 SCC (Cri) 438.***]

36. As adumbrated supra, the appellant, after completion of the proceedings under section 313(1)(b) of Cr.P.C, had filed his written statement as contemplated under section 233(2) of Cr.P.C, wherein he has stated that during the life time of his grand mother Mariyayee, the properties of his grand father viz., Ayanraju was partitioned between PW5 [who is the younger sister of the appellant's father] and the family of the appellant and thereafter, they had been in enjoyment of their respective shares. However, according to the appellant, PW5 had demanded more properties and on account this reason, she had developed grudge on the family of the appellant. The appellant, in his statement, however, denied the allegations of pestering of money from the deceased Mariyayee for drinking purpose and demanding her to transfer her residential house in his name.

37. PW1 and PW5, who are the husband and wife, have categorically deposed that the appellant was addicted to drinking habit and due to this reason, he had been pestering money from the deceased Mariyayee and he had also been insisting her to transfer her residential property in his name.

38. PW1 has also narrated the overtact of the appellant comprehensively in his evidence, which with stood the test of cross examination. Therefore, it cannot be heard to say that there was absence of motive in the mind of the appellant for the commission of the crime.

(ii). **Is there any delay in lodging the complaint (Ex.P1). Even it is so, it is fatal to the case of the prosecution.**

(iii). **The presence of PW1 has not been disproved by the defence:-**

As per the case of the prosecution, the occurrence was taken place at 6.30 p.m. on 17.01.2013. PW5 has also deposed that she had received a telephonic call from her husband at about 06.30. p.m informing that the appellant had constricted the neck of her mother Mariyayee and therefore, he was taking her to ABC Hospital. On receipt of this telephonic message, PW5 had reached the ABC Hospital, even prior to the arrival of PW1.



39.PW8, Dr.Mohammed Ghouse Khan, has deposed that at about 7.30 p.m. the deceased was brought by PW5 for admission and that despite the treatment, she had died at 7.55 p.m., which is ratified by Ex.P3 Accident/Injury Register issued by him. But, he did not say anything as to whether he had given any intimation to concerned police. PW1 would however say that he had been to Srirangam police station and lodged a complaint under Ex.P1. In his cross examination, PW1 has deposed that when they were present in ABC Hospital, police people came there at 7.30 p.m. and he was examined by police along with one Manohar, but they had not obtained any signature from him. PW1 has also stated that his signature was obtained in Ex.P1 in the police station on 17.01.2013 at about 11.30 p.m.

40.It is also to be noted that as per PW1's evidence, on his narration, one Sub Inspector of Police, had reduced his statement into writing. On coming to the evidence of PW15, the Inspector of Police, he would state that PW1 had come to the police station at about 11.30 p.m. on 17.01.2013 and lodged a complaint and based on his complaint, he had registered a case in Crime No.22 of 2013 under section 302 of IPC (Ex.P12) and thereafter, both the documents viz., Ex.P1 and P12 were sent to the learned Judicial Magistrate No.3, Trichy through PW13.

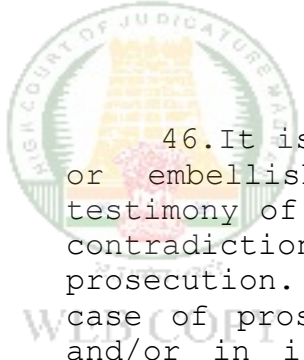
41.As it is seen from the evidence of PW13, Head Constable, at about 00.45 a.m. on 18.01.2013, he had received a cover containing FIR and proceeded to the court in a two wheeler at about 2.00 a.m. and handed over the said envelop at the hands of the learned Judicial Magistrate.

42.PW15, the Investigating Officer has also ratified the evidence of PW13. According to PW15, he had prepared the FIR at 12.00 midnight and handed over to PW13 at 00.45 a.m. for being taken to the Judicial Magistrate No.3, Trichy.

43.On perusal of Ex.P1 Complaint as well as Ex.P12 printed FIR, it is revealed that both the documents were received by the learned Judicial Magistrate No.3, Trichy at 2.00 a.m. on 18.01.2013.

44.As stated by PW13 Head Constable, the learned Judicial Magistrate No.3, Trichy has also signed in both the documents with the date and time.

45.On perusal of the evidence of PW15, particularly the cross examination, he would state that PW1 had presented a written complaint. He has also admitted that he had not written the complaint. PW1 would depose that at about 11.30 p.m. he had been to Srirangam Police station and lodged a complaint before PW15. But he has never stated that he had lodged a written complaint. In his cross examination, he has stated that on his narration, the Sub Inspector of Police had written Ex.P1 and the contents were also red over to him by the said Sub Inspector of Police. But the minor contraction between the testimonies of PW1 and PW15 will not in any way affect the probabilities of the prosecution case and we also find that there is no delay in lodging the complaint and the complaint along with the printed First Information Report was taken to the learned Judicial Magistrate No.3, Trichy PW13 well within the time and there was also no delay in travelling the FIR to the court.



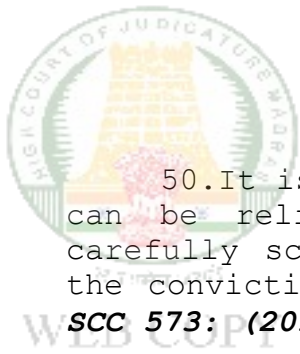
46. It is trite law that contradictions, inconsistencies, exaggerations or embellishments alone are required for holistic appreciation of testimony of witnesses. In other words, we would like to say that material contradictions alone are relevant and can affect the case of the prosecution. Every variation may not be enough to adversely affect the case of prosecution. No statement of a witnesses can be read in part and/or in isolation, but the court should examine the statement of a witness in its entirety and read the said statement along with statement of other witnesses in order to arrive at a rational conclusion. At the same time, the court has to see as to whether variations are material and affect the prosecution case substantially. The variations pointed out as regards the time of commission of the crime are quite possible. It will be unreasonable to attach motive to the witnesses or term variations of 15-20 minutes in the timing of a particular event as a material contradiction. It probably may not even be expected to these witnesses to state that these events with relevant timing with great exactitude, in view of the attendant circumstances and the manner, in which the occurrence was taken place. [Reference is made to **Shymal Goush vs. State of West Bengal (2012) 7 SCC 646**].

47. On perusal of the provisions of section 157 of the Code of Criminal Procedure, what appears is that the investigation of a cognizable case may be initiated by any officer, empowered under section 156 of the Code of Criminal Procedure Code, if he has reason to suspect the commission of an offence and if he starts the investigation, he shall have to send the report of the same to a Magistrate empowered to take cognizance of such offences upon a police report.

48. It is well settled law that mere delay in sending the first information report to a Magistrate cannot be a ground to throw out the prosecution case, if the evidence adduced is otherwise found to be credible and trustworthy. Every delay in sending the report to the Magistrate would necessarily not lead to inference that the FIR was not lodged at the time stated or was anti-timed or anti-dated or investigation is not fair and forthright unless prejudice to the accused is shown. This proposition is laid down in **Bhajan Singh vs. State of Haryana [(2011) 7 SCC 421: JT 2011 (7) SC 141: 2011(3) RCR (Criminal) 641: 2011(6) SCALE 630: [2011] 7 SCR 1.]**

49. Can the conviction be maintained primarily on the basis of the solitary eye witness viz., PW1:-

No doubt, it is true that PW1 Jayaraj is the son in law of the deceased Mariyayee and the husband of PW5, Muruthayee, who is none other than the daughter of the deceased Mariyayee and the appellant is also closely related to PW5 Maruthayee being the paternal aunt as well to PW1. Since, he is closely related to the deceased, his evidence cannot be brushed aside or discarded solely on this ground. His presence in the house of the deceased at the time of the occurrence has been proved by PW5. Though PW2 to PW4 have turned hostile, on a comparative reading of the evidences available in the court and their 161(3) Cr.P.C statements given before the Investigating Officer (PW15). It is manifest that they have spoken to about the presence of PW1 in the house of the deceased at the time of occurrence. It is, however, different matter that they have deviated from the original track and PW2 has also added some other extra facts, which are extraneous to the circumstance of this case.



50. It is an archaic position of law that evidence of a related witness can be relied upon, provided it is trustworthy. Such evidence is carefully scrutinized and appreciated before reaching to a conclusion on the conviction of the accused. [See; **M.C.Ali vs. State of Kerala {2010(4 SCC 573: (2010)2 SCC (Cri) 885 : AIR 2010 SC 1639}**].

51. In so far as this case is concerned, it cannot be stated that no independent eye witness was examined on the side of the prosecuting agency. The prosecution has taken strenuous effort to examine the independent witness as to support their case, but unfortunately, they have turned hostile. However, the hostility of PW2 to PW4 does not adversely affect the case of the prosecution.

52. In so far as PW1 is concerned, since he being the sole eye witness, we find that he has given a graphic account of the events, which he had witnessed, with some precision cogently and his evidence has also been corroborated by PW5 and PW6 and also supported the medical evidence adduced by PW9. The evidence in face of the hostile witness can still be a ground for holding the accused guilty of the crime, that was committed. The court has to act with greater caution and accept such evidence with greater degree of care in order to ensure that justice alone is done to both parties.

53. Having regard to the above aspect, we are of the considered view that the evidence given by PW1, being the solitary eye witness is unequivocally pointing towards the guilt of the accused and we, therefore, without any hesitation would like to say that there may not be any impediment to maintain the connection based on the evidence of PW1.

54. Lastly, Mr. Veera Kathirvan, the learned counsel for the appellant has made an endeavour, while advancing his argument to say that the learned trial Judge had miserably failed to appreciate the testimonies of PW1, PW8 and PW9.

55. In this connection, he has maintained that PW1 had deposed that the appellant had constricted the neck of Mariyayee.

56. PW8 Dr. Mohammed Ghouse Khan attached to ABC Hospital has deposed that when he had examined the deceased Mariyayee, who was brought to Hospital by PW5 being the daughter, she had represented, at the earliest point of time that the deceased had a fall.

57. Mr. Veera Kathiravan, has also drawn our attention to Ex.P3 Copy of the Accident/Injury Certificate, given by PW8, which is having the reference of history of fall. Therefore, he has indicated that if really, the appellant had strangled and thereby committed murder of the deceased, PW5 would have narrated the same fact before PW8. But, the necessity of concealing the real fact had not arisen in the case of PW5.

58. Besides this, he has also drawn our attention to the evidence of PW8 in Chief, wherein he has stated that Mariyayee, though conscious, was struggling for breathing and her pulse rate was gradually coming down and BP was not recordable and therefore, the treatment of heart massage was given and necessary medicines were also administered, however, she had



59. With reference to the evidence of PW9 and Ex.P5 Postmortem Certificate, he would state that as described in serial Nos.4 and 5 of Ex.P5 Postmortem Certificate, PW9 had found fracture of manubrium sterni transversely at the level of 4th rib attachment with surrounding area bruising and another fracture of left collar bone, 1-5 left side ribs, 2-6 right side ribs with surrounding thoracic wall bruising.

60. In this connection, he has raised the following crucial question:-

"If it is the case of strangulation, could there be a fracture of manubrium sterni transversely at the level of 4th rib attachment with surrounding area bruising as well as fracture of left collar bone, 1-5 left side ribs, 2-6 right side ribs with surrounding thoracic wall bruising."

61. He had also continued that the fracture as afore-stated described in serial Nos.4 and 5 of Ex.P5, Postmortem Certificate would be the best evidence in favour of the defence to suggest that it is a case of all as represented by PW5 before PW8 and no strangulation as deposed by PW1. He has also maintained that the testimonies of PW5 and PW1 were conflicted and contradicted with each which was adversely affected the case of the prosecution.

62. The argument of Mr. Veera Kathiravan, makes us to have a comparative study of the testimonies of PW1, PW8 and PW9 with the assistance of Ex.P5, Postmortem certificate.

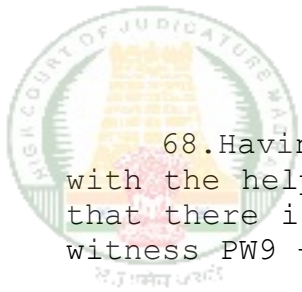
63. The case of the prosecution is that the appellant had committed murder of the deceased Mariyayee by strangulation. The case of the defence is that since, there was a fracture over the rib and left collar bone as well as over manubrium sterni, it might not be the case of strangulation, but it might be the case of fall "as stated by PW5 before PW8".

64. In this connection, firstly, we would like to point out that the deceased Mariyayee was aged about 90 years and she is a nonagenarian and her bones, at the age of 90, would not be so strong. Since, she was getting older, her bones would have been in a feeble nature, without having that much of strength.

65. Secondly, we would like to place it on record that as evident from the deposition of PW8, since the deceased was struggling for breathing, heart massage was performed. While giving Heart massage treatment, a considerable velocity of pressure is required. The thoracic pressure by Doctor or Nurses with certain velocity of pressure might have caused fracture over the left collar bone as well as over manubrium sterni transversely at the level of 4th rib.

66. It is to be seen that as stated in Injury No.1 in Ex.P5, Postmortem report, there were linear abrasions of varying lengths on the front of the neck with suspected nail marks. Injury No.2 is contusion on the front of neck.

67. On bloodless dissection of neck, PW9 has found bruising of soft tissues, and diffused blood in to the soft tissues of neck. Besides this, thyroid cartilage was found fractured and inward compression fracture of greater horn at the junction with the body of hyoid bone was detected. Injury No.1 to 3 would suggest that there was an act of strangulation, otherwise these injuries would not have occurred.



68. Having scrutinized the testimonies of the prosecution witnesses with the help of the documentary evidence, we are of the definite opinion that there is no inconsistency between the eye witness PW1 and the medical witness PW9 + Ex.P5. Postmortem certificate.

69. Keeping in view of the above facts, we find that the conviction and sentence imposed on the appellant by the learned trial Judge does not suffer with any infirmity and therefore, it does not require the interference of this court, as it is found in consonance with the penal provisions of section 302 of IPC.

70. In the result, this criminal appeal is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar(C.S)

To.

1. The Principal District Sessions Judge, Trichy.
2. The Judicial Magistrate No.III, Trichy.
3. -Do- Through The Chief Judicial Magistrate, Trichy.
4. The Commissioner of Police, Trichy.
5. The Director General of Police, Chennai.
- 6 The Inspector of Police, Srirangam, Trichy.
7. The Superintendent, The Central Prison, Trichy
(in duplicate to communicate accused)
- 8 The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy To.

The Section officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai

+1cc to Mr.Veera Kathiravan, Advocate in SR.No. 3033

TS/11.02.2015/12P-12C