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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2015

CORAM:

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

and

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

CRIMINAL APPEAL (MD) Nos.332, 348 of 2013 and 61 of 2014
and
M.P. (MD) No.1 of 2014

1.Sasikumar

2.Nagaraj

3.Jeyakodi

: Appellants/Accused 4, 5 and 7
(in Cr1.A (MD) .No.332/2013)

Vs.

State represented by
The Inspector of Police,
Usilampatti Town Police Station,,
Madurai District,
(Crime No.440 of 2011)

: Respondent/Complainant
(in Cr1.A (MD) .No.332/2013)

Prayer in Cr1.A (MD) No.332 of 2013: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure 1973, against the order of conviction and sentence, dated 09.10.2013 recorded in the case in S.C No.131 of 2012 on the file of the learned VI Additional Sessions Judge, Madurai, Sessions Division.

Maluchamy @ Maheshwaran

: Appellant/Accused No.6
(in Cr1.A (MD) .No.348/2013)

Vs.

State represented by
The Inspector of Police,
Usilampatti Town Police Station,
Madurai District.
(Crime No.440 of 2011)

: Respondent/Complainant
(in Cr1.A (MD) .No.348/2013)

Prayer in Cr1.A (MD) No.348 of 2013: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure 1973, against the order of conviction and sentence, dated 09.10.2013 recorded in the case in S.C No.131 of 2012 on the file of the learned VI Additional Sessions Judge, Madurai, Sessions Division.



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Vs.

State through
Inspector of Police,
Usilampatti Town Police Station,
Madurai District.
(Crime No.440 of 2011)

: Appellant/Accused No.3
(in Crl.A(MD).No.61/2014)

: Respondent/Complainant
(in Crl.A(MD).No.61/2014)

Prayer in Crl.A(MD)No.61 of 2014: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure 1973, against the order of conviction and sentence, dated 09.10.2013 recorded in the case in S.C No.131 of 2012 on the file of the learned VI Additional Sessions Judge, Madurai, Sessions Division.

For Appellants in

Crl.A(MD)No.332 of 2013 : Mr.A.K.Azagarsamy

For Appellant in

Crl.A(MD)No.348 of 2013 : Mr.R.Anand

For Appellant in

Crl.A(MD)No.61 of 2014 : Mr.W.Peter Ramesh Kumar

For Respondents

: Mr.K.S.Durai Pandian
Additional Public Prosecutor

JUDGEMENT RESERVED DT: 11 .02.2015

JUDGEMENT DELIVERED DT: 25 .02.2015

COMMON JUDGMENT

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

Crl.A. (MD)No.332 of 2013:- This memorandum of criminal appeal has been directed against the order of conviction and sentence, dated 09.10.2013 recorded by the learned VI Additional Sessions Judge, Madurai as against the appellants/A4, A5 and A7, in the case in S.C.No.131 of 2012, convicting the 1st appellant/A4 under section 302 r/w 120(B) of IPC and sentencing him to suffer life imprisonment and to pay a fine of Rs.1,000/-, in default to suffer a further period of 6 months of S.I; convicting the appellants 2 and 3/A5 and A7 under sections 449 and 302 of IPC and sentencing them each to suffer five years of R.I and to pay a fine of Rs.1,000/-, in default to suffer a further period of six months of S.I under section 449 of IPC and sentencing them each to suffer life imprisonment and to pay a fine of Rs.1,000/-, in default to suffer a further period of 6 months of S.I. under section 302 of IPC.



2.Cr1.A.(MD)No.348 of 2013:- This memorandum of criminal appeal has been directed against the conviction and sentence, dated 09.10.2013 recorded by the learned VI Additional Sessions Judge, Madurai as against the appellant/A6 convicting him under sections 449 and 302 of IPC and sentencing him to suffer 5 years of R.I and to pay a fine of Rs.1,000/-, in default to suffer a further period of 6 months of S.I and to suffer life imprisonment and to pay a fine of Rs.1,000/-, in default to suffer a further period of 6 months of S.I.

3.Cr1.A(MD)No.61 of 2014: This memorandum of Criminal Appeal has been directed against the conviction and sentence, dated 09.10.2013 recorded by the learned VI Additional Sessions Judge, Madurai as against the appellant/A3 convicting him under section 302 of IPC and sentencing him to suffer life imprisonment and to pay a fine of Rs.1000/-, in default to suffer a further period of 6 months of R.I and also convicting him under section 449 of IPC and sentencing him to suffer 5 years of R.I and to pay a fine of Rs.1,000/-, in default to suffer a further period of 6 months of R.I.

4.With the appellants/A3 to A7 were tried along with the other accused in the above case in S.C.No.131 of 2012 and the issue involved in all the above three appeals is one and the same, all the three appeals were consolidated together, heard jointly and disposed of in this common judgment.

5.In so far as the Sessions Case in S.C.No.131 of 2012 is concerned, totally seven accused were put on trial to face the charges described as under:-

- 1.under section 120(B) as against A1 and A2
- 2.under section 449 of IPC as against A2, A3 and A5 to A7
- 3.under section 302 of IPC as against A1 to A3 and A5 to A7.
- 4.under sections 302, 449 r/w 120(B) of IPC as against A4.

6.It is manifested from the records that the prosecuting agency in order to prove their case, has totally examined 18 witnesses and during the course of their examination, the documentary evidences ranging from Exs.P1 to P37 and the material objects ranging from MOs1 to 52 were marked. Neither oral nor documentary evidence was adduced on behalf of the accused persons.

7.On analysing and evaluating the evidences, both oral and documentary, the learned trial Judge viz., the 6th Additional Sessions Judge, Madurai has proceeded to find that the charges levelled against the accused persons, (excepting the charges under section 449 IPC as against A4) have been proved and therefore, he has convicted them thereunder and sentenced as afore stated.



8. The appellants viz., A3 to A7, challenging the correctness of the conviction and sentence, dated 09.10.2013 recorded by the learned trial judge, stand before this court with these appeals.

9. Heard Mr.A.K.Alagarsamy, learned counsel appearing for the appellants in CrI.A.(MD)No.332 of 2013/A4, A5 and A7, Mr.R.Anand, learned counsel appearing for the appellant in CrI.A.(MD)No.348 of 2013/A6 and Mr.W.Peter Ramesh Kumar, learned counsel appearing for the appellant in CrI.A.(MD)No.61 of 2014/A3 and Mr.K.S.Duraipandian, the learned Additional Public Prosecutor appearing for the State.

10. Whatever high (or) wise he is ! when he happens to commit an act of wrong, which is totally against the societal morality and rights of private individual, he would certainly in a flustered state, leave either tangible or intangible, indelible mark of vestige, which would in the latter stage enable the authority concerned to discover the trace of that act. This is the archaism and that is what happened in this case.

11. Mr.A.K.Alagarsamy, Mr.R.Anand and W.Peter Ramesh Kumar, learned counsels appearing for the appellants, orchestrally have submitted that nothing available to connect the appellants with the alleged criminality. But Mr.K.S.Duraipandian, learned Additional Public Prosecutor has refuted their arguments and maintained that the prosecuting agency has proved all the incriminating circumstances, which are pointing towards the appellants to suggest that nobody could have committed the crime, excepting the appellants and that all proved circumstances, which form a complete chain of events are inconsistency with the hypothesis of innocence of the appellants, but consistency with the hypothesis of their guilt.

12. As per the case of prosecution:-

A1 Selvi(not the appellant herein) is the wife of the deceased Velu. PW5 and PW7 are their daughters. PW1 is the mother of the deceased. The deceased Velu and his wife A1 Selvi had been residing along with their children viz., PW5 and PW7 at Nethaji Nagar, Usilampatti.

13. A2 (Karikalan) was residing adjourning to the house of the deceased Velu. Velu was doing centring work. Under this circumstance, A1 Selvi, had developed extra marital affairs with A2 Karikalan. When the deceased Velu came to know about their illicit relationship, he had severely warned his wife and he had also grown suspicion over her fidelity and therefore, he had kept keen watch on her conduct.

14. It is alleged that A2 Karikalan had given assurance to A1 Selvi that he would marry her. Since, her husband Velu had been



causing hindrance for their illicit relationship and since, they decided to marry with each other, both A1 and A2 were planning to annihilate the deceased Velu and therefore, they conspired together and reached out to an evil design to do away with his life.

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15. In order to materialize their plan, A2 with the active assistance of A3, Saravanan, A4 Sasikumar and A5 Nagaraj, was trying to kill the deceased Velu at 6.00 p.m. on 12.07.2011 by hitting him with an ambassador car bearing registration NO.TN-01-K-6688, near a bridge located on the eastern side of the Valanthur, when the deceased Velu was proceeding towards west in his two wheeler. But they had failed in their attempt, as the deceased Velu had escaped with a simple hurt. On a complaint lodged by the deceased Velu on 12.07.2011 with the Valanthur Police Station, a case in Crime No.72 of 2011 under section 279 of IPC was initially registered on 19.07.2011. After investigation, the Inspector of Police attached to Sekkavurani Circle Police Station had altered the section of law into one under section 307 r/w 34 of IPC, after including A1 (Selvi) and other accused viz., A3, A4 and A5.

16. Now it is understood that the case in S.C.No.111 of 2012 is pending trial on the file of the III Assistant Sessions Judge, Madurai.

17. On coming to the instant case on hand, the prosecution alleges that A2 Karikalan had shared his intention with his friends viz., A3, A4 and A5 and they had also agreed to give shape to the conspiracy, conspired by A1 and A2.

18. Accordingly, A5 Nagaraj had agreed to materialize their evil design with the assistance of his henchmen A6, A7 and A8 and another accused namely Sathish @ Sathishkumar (Juvenile). This was disclosed to A1 Selvi by A2 and for this purpose, A1 Selvi had parted with a sum of Rs.1,72,000/- on 25.07.2011 and A2 Karikalan had in turn given a sum of Rs.20,000/- to A5 Nagaraj as a token advance and assured that the remaining balance of Rs.1,30,000/- would be given after the commission of murder of the deceased Velu.

19. That on the next day i.e., 26.07.2011, A4 had taken A6, A7, A8 in the car belonged to A5 and reached Usilampatti Tank, where A2 and A3 were waiting and thereafter, A6, A7 and A8 were introduced to A2 and A3. Subsequently, A2 and A4 had proceeded to the house of the deceased Velu in an auto bearing registration No.TN58-U-8555 and A3, A5 to A8 had followed them in a TATA ACE vehicle bearing registration No.TN60-X-6005.

20. The above said Auto was driven by A2 Karikalan, whereas the TATA Ace vehicle was driven by A3. They all had reached the



house of the deceased at about 2.00 a.m. on 27.07.2011 and parked their respective vehicles at some distance away from the house of the deceased.

21.As already instructed by A2, A1 Selvi had readily kept the door of her house opened. While A4 was staying outside the house to watch as to anybody is coming, A2, A3, A5 to A8 had entered the house. The deceased Velu was sleeping in the centre Hall of his house. While so, A1 and A3 had caught hold his legs. A7 had closed his mouth and stabbed him with knife over his chest. A6 had caught hold his hands and stabbed him over his upper stomach and as a result of which, the small intestine was protruded. A2 had also stabbed over the lower jaw of the deceased with knife. While A5 had inflicted cut injuries over the left hand fingers of the deceased, A8 had cut his neck with knife and due to multiple grievous injuries inflicted on the person of the deceased, he had instantaneously succumbed to injuries on the spot.

22.Prior to this incident, after taking dinner, PW7 Monisha and PW5 Divya, who are the children of the deceased Velu and A1 Selvi went along with their younger brother to bed and they were sleeping inside the room, while their father and mother were sleeping in the front room. At about 2.00 a.m., as it is revealed from the evidence of PW7 she heard a screaming sound and immediately, she along with PW6 and her brother had knocked at the door, but the door was not opened immediately and when it was opened after sometime, they had found that their father was lying in a pool of blood with injuries. Their mother was found standing by the side of the dead body of their father, without trace of any worry and almost, she was found to be inactive and unresponsiveness.

23.On seeing this, PW5 had made calls to her relatives and at the first instance, she had made a call to PW8 Rajangam and he in turn had informed PW1 Lakshmi and on receipt of message from PW8, PW1 Lakshmi, who is none other than the mother of the deceased Velu, had reached to the house of the deceased along with her husband and PW8 Rajangam, in an auto, which came that side. After seeing her son, lying on the floor with bleeding injuries, PW1 along with her husband had been to Usilampatti Police and lodged a complaint before PW17, the Sub Inspector of Police at about 3.30 a.m. on 27.07.2011 and on receipt of the complaint Ex.P1, PW17 had registered a case in Crime No.440 of 2011 under sections 120 (B), 302 of IPC. The printed FIR was marked as Ex.P24.

24.PW7, after registering the case, had informed PW18 through phone and at about 04.00 a.m., PW18 had taken up the case for investigation and proceeded to the place of occurrence. He had also inspected the place of occurrence in the presence of PW11 and one Anubhuzhian and prepared an observation magazar along with a rough sketch, which were marked as Ex.P2 and P25.



25. Thereafter, he had seized the incriminating materials from the place of occurrence under the cover of a seizure magazar. The material objects were marked as MOs1 to MO11. Then, he had conducted inquest on the dead body in the presence of Panchayadars between 05.30 a.m. and 07.30 a.m. and prepared a report to that effect under Ex.P26. Subsequently, he had sent the dead body to Usilampatty Government Hospital along with a requisition for conducting postmortem examination.

26. PW12 Dr. Parimala Devi, Civil Assistant Surgeon attached to Government Hospital Usilampatti, had an occasion to conduct the postmortem on the dead body of the deceased Velu. During the course of her examination, she had found the following injuries:-

1. Cut injury over the neck from the thyroid cartilage to 4th cubical vertebral.

2. Left thumb cut injury 3 c 1.5 c.m.

3. Left Index finger cut injury 2 x .05 cm.

4. Cut injury on the left middle finger 0.5 x 0.5 cm.

5. Cut injury on the left little finger 1.5 x 0.5 c.m.

6. Cut injury on the left palm 1 cm x 0.5

7. Cut injury right middle finger 1.5 x 0.5 cm.

8. Cut injury right little finger 1.5 x 0.5 c.m.

9. Simple wound on right wrist joint 0.5 x 0.5 on the dorsum of the hand.

10. Cut injuries on the right cheek 5 cm x 1 cm

11. Stab injury on the right side of the chest on the 4th ICs.

12. No fracture of ribs.

13. Left hypo chondral stab injury around 8-10 cm omentum and parts of small intestine comes out through the wound.

14. Cut injury on the back of the right ear 7 x 0.5 c.m.

27. After the completion of postmortem examination, she had issued a Certificate to that effect under Ex.P20, wherein she had opined that the death would appear to have occurred due to vital organ injury and Hypo-volemic Shock.

28. Then, PW18 the Investigating Officer had arrested the accused and recovered the incriminating materials and thereafter sent them to court for being remanded and the incriminating articles for being sent to chemical examination.

29. He had also examined other witnesses and recorded their respective statements. On his request, the incriminating articles were sent for chemical examination by the learned Judicial Magistrate No.1, Usilampatti. After the completion of the investigation, he had laid a final report before the learned Judicial Magistrate No.1, Usilampatti as against the accused persons on 17.10.2011 under sections 120(B), 449 and 302 of IPC.



30. When the incriminating circumstances, arising out of the testimonies of the prosecution witnesses were put to the accused, including the appellants herein, while denying their testimonies, they had replied that this case was foisted against them. Neither oral, nor documentary evidence was adduced on their behalf.

31. On appreciation of the evidences and on considering the statements made on behalf of the prosecution, the learned trial Judge had proceeded to find the appellants guilty convicted and sentenced them as afore stated.

32. Mr. A.K. Alagarsamy, the learned counsel appearing for A4, A5 and A7 has argued that there was a delay in lodging the complaint by PW1 and in this connection, he would submit that the presence of PW1 before PW17 at 3.30 a.m. as alleged by the prosecution was highly doubtful. According to the prosecution, the occurrence was taken place at 2.00 a.m. on 27.07.2011 and it is revealed from the evidence of PW7, Monisha that at about 02.00 a.m, while she was sleeping inside the room, she heard a screaming sound and on hearing the sound, she along with PW5, her sister and her younger brother had knocked at the door and after sometime, when the door was opened, they had found their father lying in a pool of blood and their mother was simply standing by the side of the dead body of their father. Immediately, she had informed her relatives and PW5 had informed PW8 Rajangam.

33. PW8 says that between 02.00 a.m. and 02.15 a.m. he had a phone call from PW5 and informed about the incident. PW8 had in turn informed the same to PW1 Lakshmi and thereafter, PW1, PW8 along with PW1's husband went to the house of the deceased. PW8 also says that they had firstly proceeded by walk and after ten minutes, an auto came there and thereafter, reached the occurrence place in the above said auto. As per the evidence of PW1, she had proceeded to Usilampatti police station and lodged a complaint before PW17 at 3.30 a.m. P.W.17 the Sub Inspector of Police, has also ratified this fact.

34. On a cursory perusal of Ex.P1 as well as Ex.P24 the printed FIR, it is revealed that at about 3.30. a.m., PW17, based on the complaint received from PW1 had registered a case in crime No.440 of 2011.

35. At about 2.15 a.m., PW1 had started from her house along with her husband and PW8 Rajangam, but they were first walking about 10 minutes and thereafter, came to the place of occurrence by an auto and subsequently, after seeing the dead body of her son, she had been to Usilampatti Police and lodged a complaint at 3.30 a.m.



36. We have to imagine certain things and find out the real position, in which PW1 would have been as she being the mother of the deceased.

37. On a combined reading of the evidences of PW1, PW8 and PW17, we find that no delay was caused either to lodge a complaint or to register the case. As it is seen from Ex.P24 printed FIR, the learned Judicial Magistrate No.1, Usilampatti has received, both the complaint as well as the FIR at 5.20 a.m. on 27.07.2011. This has also been spoken to by PW13, Grade I Police Constable Mayakannan. He says that at about 04.30 a.m., he had received the FIR and handed it over to the learned Judicial Magistrate No.1, Usilampatti at 5.20 a.m.

38. In this connection, Mr.A.K.Alagarsamy, has argued that in the printed FIR Ex.P24, the learned Judicial Magistrate No.1, Usilampatti had originally endorsed as 5.20 p.m. and subsequently, the latter 'P' appears to have been corrected as 'A'. Therefore, the overwriting on the letter 'P' created doubt about the authenticity of Exs.P1 and P24.

39. We have with great caution read the Ex.P1 complaint and Ex.P24 FIR.

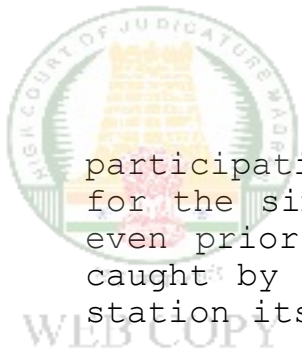
40. At the first instance, we would like to say that human is error. On the face of Ex.P24, it appears that the learned Judicial Magistrate No.1, Usilampatti, had over written on the letter 'P' as 'A' and this might have happened only due to hand slip and not otherwise as argued by Mr.A.K.Alagarsamy.

41. On careful examination of Ex.P1 and Ex.P24, we do not see any delay that too abnormal, which would create suspicion on the probabilities of the prosecution case.

42. Mr.A.K.Alagarsamy, learned counsel has also averted to that the earliest information received by the Investigating officer viz., PW18 and PW11 the Village Administrative Officer were purposely suppressed, for the reasons best known to the prosecuting agency. He has also maintained that PW18 had stated that he had received the information about the occurrence at 3.30 a.m., but that information was also deliberately suppressed.

43. He has also added that PW5 had categorically admitted that on the date of occurrence itself, both of them were examined and their statements were recorded under sections 161(3) Cr.PC, but their statements were sent to court only on 18.08.2011, after a lapse of 20 days, for which no explanation had been given by the prosecution.

44. Mr.R.Anand, the learned counsel appearing for the appellants in CrI.A.(MD)No.348 of 2013/A6 has submitted that the



participation of the appellants in this case is highly doubtful for the simple reason that PW1 in her evidence had admitted that even prior to the registration of FIR, the accused persons were caught by the respondent police and found present in the police station itself.

45. In this connection, he would submit that the FIR, which came into existence after the nabbing of the accused persons could not be relied upon and the said aspect made it very clear that the present FIR must have been certainly cooked up by the respondent police to suit the case of the prosecution.

46. Apart from this, Mr. R. Anand, has also pointed out that the registration of FIR in Crime No. 72 of 2011 on the file of Valanthoor Police station for the offences under sections 279 and 307 of IPC would be very much sufficient to come to a conclusion that the prosecution had fabricated such documents to strengthen the case of the prosecution.

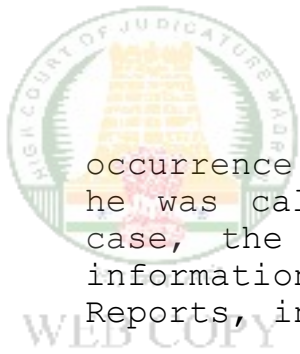
47. Mr. W. Peter Ramesh Kumar, has also pointed out that in so far as the present case on hand was concerned, two FIRs had been registered. One by PW17 the Sub Inspector of Police and the other one by PW18, which created a serious doubt with reference to the probabilities of the prosecution case and this aspect had not been looked into and appreciated by the court below.

48. He has also indicated that the author of the FIR Ex. P1 was not put in the box for the purpose of confrontation to find out the fact of circumstance in which he happened to pen down the complaint. The learned counsels have conjointly questioned the genesis of the FIR.

49. As already discussed, PW18 was informed by PW17 at 3.30 a.m. through phone and only thereafter, he (PW18) had taken the assistance of PW11 the Village Administrative Officer and his menial and proceeded to the place of occurrence, where at about 4.00 a.m., he had received the copy of the FIR from PW17. PW17 has also ratified this fact.

50. He has also stated that the fact of receipt of the complaint was informed to PW18 the Inspector of Police through phone and thereafter, the copy of the FIR was taken to the place of occurrence and handed over to him at about 4.00 a.m. for investigation.

51. On coming to the evidence of PW11, the Village Administrative Officer, he would state, in his chief examination that on 27.07.2011 based on the call given by the Investigating Officer, he had been to the place of occurrence along with his village menial Anbuchezhian. In his cross examination, he would state that he was informed by his Village Menial about the



occurrence between 3.30 a.m. and 3.45 a.m. and at about 3.45 a.m., he was called by the Inspector of Police. When such being the case, the incident with regard to the receipt of the earliest information by PW11 and the registration of two First Information Reports, in this case would not arise.

52.PW5 Divya, the elder daughter of A1 Selvi and the deceased Velu, in her cross examination had deposed that after the arrival of her grand-parents viz., PW1 and her husband and after giving complaint by them to the police, the Police people came to their house at about 04.00 a.m.

53.On appreciation of the testimonies of PW1, PW5, PW7, PW8, PW11, PW17, PW18, we find that we do not find material to trace that the earliest information received by either by PW17 or by PW18 was suppressed to suit the convenience of the case of the prosecution and no further iota of evidence is available in the cross examination of the Village Administrative Officer that he was informed about the occurrence, even prior to the lodging of the complaint.

54.On assessing of the testimonies of the above said witnesses, we find that nothing with regard to the fabrication of the FIR.

55.Further, the learned counsels appearing for the appellants have also failed to indicate the circumstance, under which the FIR could have been concocted.

56.Mr.A.K.Alagarsami, while advancing his argument has drawn our attention to the evidence of PW7 and in that connection, he would submit that PW7 had categorically admitted that on the very next morning itself, the accused were arrested and kept in the police station.

57.In this connection, he has also argued that if the accused persons were arrested on the next day morning and kept in the police custody, the recovery of crime weapons as alleged by PW18 would definitely falsify the case of prosecution and therefore, the recovery of the crime weapons was not substantiated by the prosecuting agency.

58.Mr.A.K.Alagarsamy, the learned counsel with regard to Ex.P26 inquest report has argued that no crime number was found place in Ex.P26 and that if the case was registered as stated by PW17, PW18 and PW1, the crime number would have been mentioned in the inquest report ExP6. Since the crime number was not found place in Ex.26, there was a reason to believe that FIR as well as the complaint could have been prepared after the inquest. This piece of argument is not able to be accepted, because the non-mentioning of the First Information Report in Ex.P26 inquest



report, will not in anyway falsify the genesis of the complaint as well as the First Information Report. The failure on the part of the Investigating Officer would not be sufficient to presume that the complaint as well as the First Information Report could have been belatedly prepared.

59. With regard to that, the learned counsels have also categorically submitted that nothing is brought on record to show that the appellants had participated in the alleged crime. Mr. A.K. Alagarsamy, has also submitted that the testimonies of PW9 and PW10 are not at all sufficient to rope the appellants into the criminality.

60. Mr. A.K. Alagarsamy, would further submit that the conspiracy theory projected by the prosecution has not been substantiated and that PW10, who was said to have seen the factum of conspiracy was examined by the Investigating Officer after a lapse of two months from the date of occurrence. He has also pointed out that PW10 had neither informed to police about the conspiracy nor to any one until he was examined.

61. He has also added that the presence of PW10 Perumal at the relevant point of time, was doubtful and that his evidence seemed to be an improved version, when comparing with his statements given before the Investigating Officer under section 161(3) of Cr.P.C.

62. He has also maintained that PW10 in his evidence, had deposed that when he came by two wheeler, its chain was snapped and after connecting the chain, he went to the nearby farm and cleaned his hands where the accused persons were conspired for the commission of the offence. But the fact of his coming in his two wheeler was not stated before the Investigating Officer.

63. On perusal of 161(3) Cr.P.C statement of PW10, it is revealed that on 26.07.2011 at noon when he was coming, all the accused persons, who are known to him were conspired in the coconut grove belongs to one Selvaraj.

64. From his 161(3) statement, it is able to understand that all the accused persons were known to him. Before the court, he has also given a vivid account with regard to the conspiracy of the accused persons. If all the persons are not known to PW10, we can understand that he would not have seen them, but it is reliably understand that all the accused persons are known to PW10. If they are unknown to him, the matter would be somewhat different.

65. Mr. R. Anand, the learned counsel has argued that excepting the alleged recovery of cash from the appellants, absolutely no materials were available to pin down the appellants in the alleged



commission of the offence. He has also argued that the recovery portion of the confessional statement of an accused would always be construed as a weak piece of evidence unless it is strengthened by acceptable evidence

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66. He has also added that mere recovery of certain amounts from the accused persons by the Investigating Officer would not lead to presume that the accused persons have committed the crime.

67. Mr. W. Peter Ramesh Kumar, the learned counsel has also argued that with regard to the evidence of PW10, no identification parade was conducted by the prosecuting agency so as to enable PW10 to identify the accused persons.

68. We have carefully and meticulously examined the evidences, both oral and documentary, which are placed before us. With reference to the argument advanced by Mr. W. Peter Ramesh Kumar, we would like to point out that no identification parade is necessary as the accused persons are known to PW10.

69. Obviously, there is no direct eye witness to the commission of the crime. However, there may not be any impediment to maintain the conviction on the accused persons, if the proved circumstances, form a complete chain of events without any dislink.

70. In ***Padala Veera Reddy vs. State of Andhra Pradesh (1991 SCC (Cr1. Page 407)***, the Hon'ble Apex Court has carved out the cardinal principles to maintain conviction on the culprit primarily on the basis of the circumstantial evidence, which run as under:-

a. The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established.

b. Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused.

c. The circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.

d. It must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused.

e. Further, to mulct the accused with criminal liability, the prosecution has relied upon the following circumstances:-

<https://hcservices.ecourts.gov.in/HCServices/> 1. The last seen theory;

2. Incriminating circumstances just prior to the occurrence;



3. Incriminating circumstances after the occurrence;

71. In so far as the present case on hand is concerned, the following incriminating circumstances are available as against the appellants and other accused:-

1. The illicit relationship between A1 and A2.

2. At the instance of A1 Selvi, A2 Karikalan, with the assistance of A3, A4 and A5 was trying to kill the deceased Velu, by hitting him with an ambassador car bearing registration No. TN-01-K-6688 at about 06.00 p.m. on 12.11.2007 and the pendency of the case in S.C.No.111 of 2012 on the file of the III Assistant Sessions Judge, Madurai.

3. On 26.06.2011, PW10 Perumal had seen a white colour ambassador car bearing registration No. TN01-K-6688 and found three persons standing near the said car conspiring together for the commission of the offence in a grove belonged to one Selvaraj.

4. PW9 Arivu Cousin of the deceased had seen A2 Karikalan, A4 and A5 along with three persons, when they were coming in an auto and TATA Ace vehicle at 1.30 a.m. near the Usilampatti Thevar Statue, which includes other three persons.

5. A1 Selvi was last seen along with her husband the deceased Velu by their children PW5 and PW7 when there were about to go to their bed.

6. When PW5 and PW7 were sleeping along with their younger brother in a room in their house, both of them heard the screaming sound and on hearing the sound, they had knocked at the door, but the door was not opened immediately and when it was opened after sometime, they were found their father lying on the floor in a pool of blood and their mother was standing by the side of the dead body of their father without any trace of worry.

7. Medical evidence as well as scientific evidence.

8. When the incriminating circumstances arising out of the testimonies of PW5 and PW7 were put to A1, being their mother and she had simply denied the testimonies as 'lie'. But she had not chosen



to give any reply or explanation and even she had not chosen to file any written statement under section 233(2) of Cr.P.C, denying her complicity in the alleged crime.

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9.The appellants also, when the incriminating circumstances were put to them, during the course of the proceedings under section 313(1)(b) of Cr.P.C, kept mum simply replying as 'lie'. They had also not chosen to file any statement under section 233(2) of Cr.P.C denying their complicity.

72.Circumstance No.I:-

The alleged illicit relationship between A1 and A2 has been spoken to by PW1 to PW5 and PW7. PW1 is the mother of the deceased and PW2 Mrs.Prim Rose Selvi, is the neighbour of the deceased and A1. PW3 is residing opposite to the house of A1 and the deceased. PW4 is the elder brother of the deceased and PW5 and PW7 are the children of the deceased and A1. PW1 and PW4 have spoken to that the deceased used to tell them about the illicit intimacy of his wife with A2 Karikalan and PW2 Prim Rose Selvi has stated that A2 Karikalan had been residing in the second floor of their upstairs and the deceased Velu and his wife A1 Selvi were residing behind their house. Under this circumstance, she would state that A2 used to come to the house of Selvi (A1) in the absence of her husband and similarly A1 Selvi also used to visit the house of A2 Karikalan and she had also seen them directly.

73.Further, she has also stated that there was illicit relationship between A1 and A2 Karikalan and on account of this reason, they would be picking up quarrel with each other. PW3 Chinnan, has also ratified the illicit intimacy of A1 and A2. PW5 and PW7 being the daughters of the deceased Velu and A1 Selvi have categorically spoken to about the illicit relation of their mother Selvi (A1) with A2 Karikalan.

74.In this connection, PW5 Divya has deposed in her chief examination that while they were residing at Karumathur, her mother had developed intimacy with another person and she was also warned severely by her father and thereafter, they had shifted their residence to Nethaji Nagar and there, also her mother (A1) Selvi had been developing illicit relationship with A2 Karikalan and in this connection, her mother was strictly warned by her father. She had identified A2 Karikalan, while she was giving evidence in the trial court.

75.PW7 Monisha also corroborated the evidence given by her services court PW5 Divya. She had also identified A2 Karikalan, when she was giving evidence and she would state that if her father had taken mutton for their house, it would be cocked up by her mother



and given to A2 Karikalan. She has also ratified that in the absence of her mother, A2 used to visit her house and similarly, her mother also used to visit the house of A2.

76. Besides this, she had also identified that A2, A4 and A5 and she says that they would also visit the house of A2, but their names were not known to her. From the testimonies of PW1 to PW5 and PW7, the illicit relationship developed by A1 Selvi with A2 has been substantiated.

77. Circumstance No. II:

Mr. K. S. Durai Pandian, the learned Additional Public Prosecutor, while advancing his argument, has brought to the notice of this court that a case in S.C.No.111 of 2012 has been pending on the file of the III Assistant Sessions Judge, Madurai as against A1 to A5, which includes the appellants 1 and 2/A4 and A5 in CrI.A.(MD)No.332 of 2013 and the appellant/A3 in CrI.A.(MD) No.61 of 2014.

78. It is revealed from the records that at the instigation of A1 Selvi, A2 with the assistance of A3 the appellant in CrI.A.(MD) No.61 of 2014 and the appellants 1 and 2/A4 and A5 in CrI.A.(MD) No.332 of 2013 was trying to kill the deceased Velu at 06.00 p.m. on 02.11.2007 by hitting him with a car bearing registration No.TN-01-K-6688 belonging to A4 Sasikumar, the appellant/A1 in CrI.A.(MD)No.332 of 2013.

79. In this connection, the deceased Velu had lodged a complaint before the Valanthoor police and a case in crime No.72 of 2011 was registered under section 279 of IPC on 19.07.2011. During the course of investigation, the other accused A1, A3 to A5 were impleaded in the above said case and an alternation report was also filed altering the section of law into one under section 307 of IPC from 279 of IPC. It is now understood that the case is still pending.

80. The learned Additional Public Prosecutor has also brought to the notice of this court that A2 Karikalan is no more as he had succumbed to HIV positive, when he was undergoing treatment in prison. The above Sessions case in S.C.No.111 of 2012 is reported to have been pending trial.

81. The above said facts of the case in S.C.No.111 of 2012 concerned in Crime No.72 of 2011 are very much relevant to prove, the illicit intimacy between A1 and A2 and their conspiracy to do away with the live of the deceased Velu, who is the husband of A1 Selvi.



The evidence of PW10 is also very much relevant and it would go a long way to prove the conspiracy as well as the pre-meeting of minds of the appellants so as to eliminate the deceased Velu. The testimony of PW10 cannot be suspected as argued by the learned counsel appearing for the appellants.

83. Circumstance No.IV:-

The evidence given by PW9 has also been exposing an important incriminating circumstance. PW9 is a Mason by profession and that on 27.07.2011 at about 01.30 a.m., after completion of his masonry work at PRC shed in Usilampatti, he was proceeding near Keelapudur, bridge at Nethaji Nagar. While so, A2 Karikalan was found driving an auto and A4 Sasikumar was also found seen along with him and he had also seen another TATA Ace vehicle, which was driven by A3 and A5 Nagaraj was found sitting along with three other persons. While giving evidence, he had also identified the appellants and A2.

84.He would depose further that after taking tea in a tea shop belonging to one Papathi Ammal, he was proceeding towards west. While so, near the Murugan temple, a TATA Ace vehicle, which was driven by Sasikumar came there and seven persons were alighted from the said vehicle at about 02.20 a.m. then he had been to his house. On the next day at about 07.00 a.m., he happened to see the TV News with regard to the murder of the deceased Velu. His evidence has withstood the test of cross examination made on behalf of the appellants.

85.Circumstance No.V:

This circumstance assumes more vital, because A1 Selvi was last seen along with her husband the deceased Velu. This circumstance has been spoken to by PW5 and PW7, who are the children of A1 and the deceased Velu. According to the evidence of PW7, both PW5 and PW7 along their younger brother were sleeping in the inner room and their father and mother viz., A1 Selvi and the deceased Velu were sleeping in the front room. From the testimonies of PW5 and PW7, we find that both their father and mother were sleeping together in the front room of their house and the presence of A1 along with the deceased Velu, at the time of commission of crime has been unambiguously proved.

86.Further, they would state that when they were sleeping in the night at 2.00 a.m, they had heard the screaming sound and after hearing that sound, both of them had knocked at the door, but the door was not immediately opened and after sometime, their mother had opened the door. When they came out, they happened to see their father lying with blood injuries all over his body. But their mother was found standing near the dead body of their father without any action or trace of worry in her face and after giving message to their relatives. they had come there and even at that



time also, A1 was found inactive and without any trace of worry in her face.

87. It is pertinent to note here that this particular incriminating circumstance was put to A1 during the course of the proceedings under section 313(1)(b) of Cr.P.C and she had simply denied the testimonies of PW5 and PW7 as 'lie'. But she had not chosen to file any written statement as contemplated under section 233(2) of Cr.P.C explaining her position and denying that circumstance pointing towards her. It is settled proposition that when the couple was last seen together in a premises to which an outsider may not have any access, it was for the husband to explain the ground for unnatural death of his wife. This dictum has been laid down in ***Dhyaneswhar vs. State of Maharashtra, (2007) 10 SCC 445: 447 (para10): (2007) 4 STL 320***

88. In the given case on hand, as spoken to by PW5 and PW7, both A1 Selvi and her husband the deceased Velu were last seen together in the front room. Usually, the access of any outsider is strictly prohibited in a residential house. Under this circumstance, it is for A1 Selvi to explain the ground of unnatural death of her husband as contemplated under section 106 of the Indian Evidence Act, 1872, as the above fact was specifically within her knowledge. Since she failed to explain this particular circumstance, an adverse inference has to be necessarily drawn against her under section 114(g) of the Indian Evidence Act, 1872.

89. It is the case of the prosecution that as already decided by Selvi (A1) and A2 Karikalan at the night on 26.07.2011 i.e. 2.00 a.m. on 27.11.2011, she had kept open the door of her house so as to facilitate the other accused persons, including the appellants to enter her house for the purpose of murdering her husband. Though, there is no direct eye witness to the occurrence, through the conduct of A1, the entire episode of prosecution case has been proved.

90. Secondly, it is established that she was present when the occurrence was taken place inside the house, particularly in the front room and her presence was ratified and PW5 and PW7 have also spoken to that they had knocked at the door of their room, after hearing the screaming sound. When they came out, their father was lying in a pool of blood with cut injuries and their mother being A1 was simply found standing in a vegetative manner. Even as alleged by the defence, if the murder was committed by some other persons, since A1 was present there, she should have taken immediate steps to lodge the complaint or she should have given some alarming sound so as to alert the neighbouring people including her children, but the conduct of A1 seems to be unusual. This circumstance has also not been explained by the defence.



91. Circumstance No.VI:

PW12 has conducted postmortem examination on the dead body of the deceased. According Ex.P20 the postmortem report as nearly as 14 injuries were inflicted on the person of the deceased Velu.

92.On perusal of Ex.P20, we find that all those 14 cut injuries would not have been inflicted by a single person, but it should have been inflicted by more than three or four persons. The final opinion given by PW12 also reveals that the death would appear to have caused due to vital organ injury and hypo-volemic shock and from Ex.P20, we find that the above said injuries would be sufficient in the ordinary course of nature to cause immediate death. Injury No.1 in Ex.P20 postmortem certificate is cut injuries over the neck extending from the thyroid cartilage to 4th cubical vertibral. Apart from this, all the injuries are inflicted on the venerable parts of the body of the deceased and therefore, we find that the medical evidence is also an important piece of evidence. Apart from this, the chemical examination reports under Exs.P22 and P23 are also sufficient to strengthen the case of the prosecution.

93.Apart from the above circumstances, the recovery of crime weapons and other incriminating articles, by the investigating officer PW18 in the presence of PW11 and other witnesses is also an important piece of circumstance.

94.As observed by the Hon'ble Apex Court in **Wakkar and another (2011(3) SCC 306)**, We know that recovery of certain incriminating articles at the instance of the appellants and other accused persons under section 27 of the Evidence Act by itself cannot form the basis for conviction. However, the recovery of incriminating article and its evidentiary value have to be considered in the light of the other relevant circumstances as well as the chain of events suggesting the involvement of the accused.

95.We also find that the trial court did not rest the conviction of the appellants solely based on the recoveries. But the recovery of the articles used in the commission of offence has been taken into consideration by the learned trial Judge, while finding the appellants guilty.

96.In so far as this case is concerned, the above stated circumstances, from which the conclusion of the guilt is to be drawn have been safely established. The established circumstances are indeed consistent only with the hypothesis of the guilt of the accused persons including the appellants, that is to say, they are not explainable on any other hypothesis, excepting the appellants are guilty. Further, the above enumerated circumstances are conclusive nature and tendency and they are excluding every



possibility of hypothesis, excepting the guilt of the appellants including the other accused.

97.As afore-stated all the above narrated incriminating circumstances form a chain of events, so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused persons and they have shown in all human probabilities the act has been done by the accused persons only.

98.Keeping in view of the above facts, we do not find any discrepancy or infirmity in the judgment of the learned trial judge and therefore, it does not require the interference of this court.

99.In the result, all the appeals are dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

To

1. THE VI ADDITIONAL SESSIONS JUDGE, MADURAI
2. THE DISTRICT AND SESSIONS JUDGE, MADURAI
3. THE JUDICIAL MAGISTRATE NO.I,USILAMPATTI
4. THE CHIEF JUDICIAL MAGISTRATE,MADURAI
5. THE DIRECTOR GENERAL OF POLICE, MYLAPORE, CHENNAI
6. THE DISTRICT COLLECTOR,MADURAI
7. THE SUPERINTENDENT,CENTRAL PRISON, MADURAI
8. THE INSPECTOR OF POLICE
USILAMPATTI TOWN POLICE STATION, MADURAI DIST, CR.NO.440/2011
9. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,MADURAI.

+1cc to Mr. R.Anand, Advocate Sr.No.8839

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AA/10.03.2015/2op- 11c/

Common Judgment made in
CRIMINAL APPEAL(MD)Nos.332, 348 of 2013 and
Criminal Appeal(MD)No.61 of 2014
25.02.2015