



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal (MD) No.146 of 2014

Muthuraman ... Petitioner/Appellant

Vs.

State represented by
The Inspector of Police,
Edamalaipattiputhur Police Station,
Trichy. .. Respondent/Respondent

PRAYER: This Criminal Appeal is filed under Section 374(2) of Cr.P.C to allow the Appeal and set aside the judgment dated 14.03.2014 made in S.C.No.210 of 2013, on the file of the Principal Sessions Judge, Trichy.

For Appellant : Mr.Veerakathiravan, senior counsel
for Mr.S.Ramasamy

For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

JUDGMENT

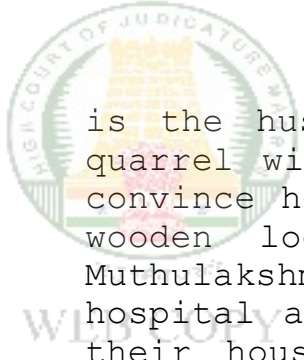
(Judgment of the Court was delivered by M.V.MURALIDARAN, J.)

The appellant is the sole accused in S.C.No.210 of 2013 on the Principal Sessions Judge, Trichy. The trial court framed charges under Sections 294(b), 302 and 506(ii) of I.P.C against this Appellant/Accused.

2.The Trial Court by Judgment dated 14.3.2014 convicted the appellant under Section 302 of I.P.C to undergo Life Imprisonment and to pay a fine of Rs.1,000/- and in default to undergo rigorous imprisonment for 6 months and further convicted the appellant under section 294(b) of I.P.C to undergo rigorous imprisonment for 3 months. All the sentences shall run concurrently. Challenging the said conviction and sentence passed against him, the present appeal has been filed by the appellant/accused.

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

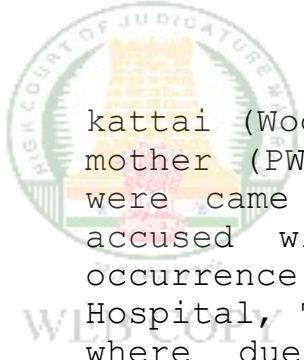
3.The case of the prosecution is that the accused Muthuraman



is the husband of Nandini (PW-4). The accused used to pick up quarrel with his wife. The mother and brothers of PW-4 used to convince her. On 16.5.12 night the accused assaulted Nandini with wooden log on her head and caused injury and her mother Muthulakshmi and deceased Madesh convinced her and sent her to hospital and then Madesh and his mother Muthulakshmi returned to their house and they slept in the frontage of the house. The husband of Muthulakshmi namely Moorthy and her elder son Lakshmanan slept inside the house. At about 12 p.m. the accused came there and the accused uttered filthy language and assaulted the deceased Madesh with Casuarina kattai (Wooden log) on the head of Madesh indiscriminately and the mother of Madesh shouted, her husband and son were came out from the house and they were threatened by the accused with dire consequences and left the place of occurrence. Thereafter the deceased was taken to Government Hospital, Trichy and subsequently he was taken to Maruthi Hospital where due to the head injuries sustained, Madesh died on 17.5.2012. After admitting the deceased Madesh in Maruthi Hospital, his mother PW-1 gave complaint Ex-P1 before the respondent police and the same was registered in Crime No:142/12 against the accused for the offence under sections 294(b), 324, 307 and 506(ii) of I.P.C. After completion of investigation, PW-13 laid charge sheet against the accused for the offence under sections 294(b), 302 and 506(ii) of I.P.C.

4. After filing the charge sheet before the Learned Judicial Magistrate No:II, Tiruchirappalli in P.R.C.No. 16 of 2012, the case was committed to the Sessions Judge of Tiruchirappalli Division, Tiruchirappalli and came to be numbered as S.C.No.210/2013. In this case, 13 witnesses were examined as prosecution side witnesses and 27 Exhibits were marked on the side of prosecution and there are 7 material objects produced before the Trial court. There was two witness and one exhibit marked on the side of the accused.

5. In this case, PW-1 Muthulakshmi who is the mother of the deceased Madesh deposed that her husband is PW-2 Moorthy. They have two sons and two daughters. Her elder daughter Nanthini PW-4 was given marriage to the accused Muthuraman. The son-in-law of PW-1 used to have frequent quarrel with his wife. The PW-1 and her sons used to convince PW-4. On 16.5.12 night the accused Muthuraman assaulted his wife Nandini with wooden log on her head and caused injury and PW-1 Muthulakshmi and deceased Madesh convinced her and sent her to hospital and then Madesh and his mother Muthulakshmi (PW-1) returned to their house and they slept in the frontage of the house. The husband of Muthulakshmi namely Moorthy and her elder son Lakshmanan slept inside the house. At about 12 p.m. the accused came there and the accused uttered obscene words and assaulted the deceased Madesh with Casuarina



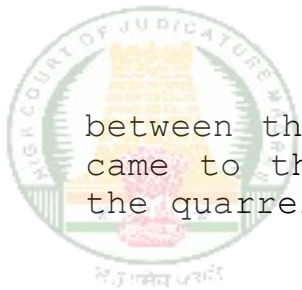
kattai (Wooden log) on the head of Madesh indiscriminately and his mother (PW-1) shouted, on hearing the same, her husband and son were came out from the house and they were threatened by the accused with dire consequences and then left the place of occurrence. Thereafter the deceased was taken to Government Hospital, Trichy and subsequently he was taken to Maruthi Hospital where due to the head injuries sustained, Madesh died on 17.5.2012. After admitting the deceased Madesh in Maruthi Hospital, his mother PW-1 gave complaint Ex-P1 before the respondent police. The PW-1 further deposed that she had seen the occurrence in the street light. She has identified M.O.1 Wooden Log and M.O. 2 Cot in the court.

6.PW-2 Moorthy, father of the deceased deposed that PW-1 is his wife, PW-3 and the deceased Madesh are his sons. On 16.5.12 he and his son PW-3 were sleeping inside the house and his wife and his elder son were sleeping in front of the house. During mid-night, on hearing noise of PW-1, he and his son PW-3 came out of the house and at that time they saw the accused assaulting the deceased Madesh with Wooden Log while he was lying on the rope cot. On seeing PWs 2 & 3, the accused threatened them by showing the wooden log and ran away from the scene of occurrence. Thereafter the deceased was taken to Government Hospital, Trichy and subsequently to Maruthi Hospital where his son Madesh died on 17.05.2012.

7.PW-3 Lakshmanan, brother of the deceased deposed that on 16.5.12 he and his father were sleeping inside the house and his mother and deceased brother Madesh were sleeping in front of the house. During mid-night, on hearing noise, they came out of the house and at that time the accused threatened to assault them with wooden log and ran away. Thereafter the deceased was taken to Government Hospital, Trichy and subsequently to Maruthi Hospital where his brother Madesh died on 17.05.2012. The PW-3 also accompanied with his mother for lodging complaint Ex-P1 before the respondent police.

8.The PW-4 Nanthini, the wife of the deceased deposed that the accused Muthuraman is her husband. After marriage, they lead a happy life and there was no quarrel between them as alleged by PWs 1 & 2. She also stated that there was no such occurrence of assaulting her by her husband on 16.5.12 and for the injury she was sent to the Hospital.

9.The PW-5 deposed that she is a neighbour of the accused. There were frequent quarrel between the accused and his wife and on the date of occurrence, during night there was a quarrel



between the accused and his wife and the deceased and his mother came to the house of the accused. When the deceased asked about the quarrel the accused shouted at him that he will murder him.

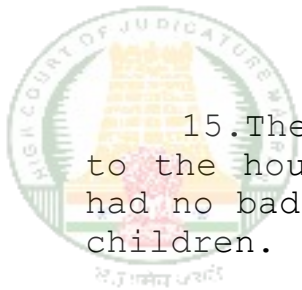
10.The PW-6 Rettamalai deposed that he is residing in Panjumill Colony and on 16.5.12 he heard some noise and when he saw the accused was running on the road with wooden log. Thereafter he came to know that the accused assaulted Madesh and he went to the house of Madesh and took him to the hospital.

11.The PW-7 V.A.O and PW-8 V.A.O's Assistant deposed that they were called by the police and they went to the police station where the police have recorded the statement of the accused in their presence. At the instance of the accused, PW-13 recovered M.O.1, M.O. 6 & M.O.7 in their presence.

12.The PW-9 Dr.Renugadevi deposed that on receipt of Ex-P10 requisition letter from PW-13, on 17.5.12 she conducted autopsy on the dead body of Shanmugapriyan @ Madesh. She issued Post Mortem certificate Ex-P11. The PW-12 Sub-Inspector of Police deposed that on receipt of complaint from PW-1, she registered FIR in Crime No:142/12 for the offence under sections 294(b), 324, 307 & 506(ii) of IPC.

13.The PW-13 Rajendran, Inspector of Police deposed that while he was working as Inspector of Police at A.Pudur Police Station, on 17.5.12 he took up the case in Cr.No.142/2012 for investigation. He went to Maurthi Hospital and recovered M.O.3 & M.O. 4 in the presence of Witnesses Arun and Rettaimalai. Thereafter, he went to the place of occurrence and prepared Ex-P4 Mahazar and Ex-P20 Rough Sketch in the presence of witnesses. Since the deceased died in the hospital, he altered the section into 302 of IPC and sent alteration report to the Learned Judicial Magistrate No:2, Trichy. The PW-13 arrested the accused in the presence of PWs 7 & 8 and recorded the confession statement of the accused. He also recovered M.O-1, M.O-6 and M.O-7 in the presence of V.A.O and his Assistant. He also enquired PW-1 to PW-3 independently and recorded the statement. After conclusion of enquiry on 12.10.2012 he filed final report against the accused for the offence under sections 294 (b), 302 and 506(ii) of IPC.

14.The DW-1 Kanchana deposed that she knows the deceased family and the accused as she is residing in the same street of the accused. on 16.5.2012 at about 5 a.m, the mother of the deceased was shouting that someone had assaulted her son Madesh and at that time, Moorthy and his son Lakshmanan came in a white colour car and taken the body of the deceased Madesh.



15.The DW-2 Kathiresan deposed that she is residing opposite to the house of the accused and he has no drinking habits and he had no bad habits. The accused is living happily with his wife and children.

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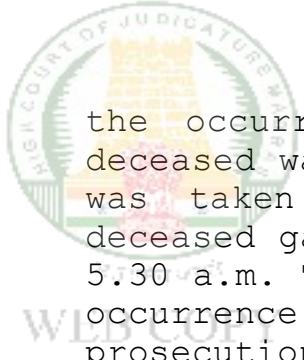
16.On the evidence taken by the trial court namely Principal Sessions Judge, Trichy came to the conclusion that the charges laid against the accused were proved by the direct evidence led by the prosecution.

17.In the above circumstance that there is no direct eye witness, the learned Trial Judge convicted the accused for the offences under sections 294(b) & 302 of I.P.C holding that the prosecution case was proved on direct evidence. Against the said conviction, the present appeal has been filed.

18.We have heard Mr.Veerakathiravan, senior counsel, for Mr.S.Ramasamy, learned counsel for the appellant and the Mr.C.Ramesh, learned Additional Public Prosecutor for the respondent and we have also perused the records carefully.

19.In this case, on going through the evidences and documents produced by the prosecution, an analyzing the evidence of PWs 1 to 3 and a perusal of evidence of PW1 disclose that the occurrence was taken place in front of her house at 12 pm on 16.05.2012. At that time the deceased Madesh and his mother PW1 were sleeping in front of their house and the father and brother of the deceased were sleeping inside the house. The version of PW1 and PW2 that they saw the accused assaulting their son deceased Madesh by wooden log in the lighting of street light. But the PW3 has stated that he has not seen the accused was assaulting the deceased. If the accused attacked the son of PWs 1 & 2, naturally they would have tried to prevent the accused from attacking the deceased. Further, the accused attacked the deceased while the deceased was lying in the cot. If the deceased was attacked while he was sleeping, then, the injury would not have been there on the back side of his head. In this case, from the evidence of PW-9, postmortem doctor, the deceased suffered injury on the back side of his head also. Therefore, the injury sustained by the deceased was caused by the accused has not been proved by the prosecution by acceptable evidence. Further, the presence of PWs1 to 3 in the place of occurrence itself is doubtful, since the evidence of PW-1 and PW-3 is not corroborated.

20.It is further case of the accused is that there was a delay in lodging the complaint. In this case, according to PWs 1 to 3



the occurrence was taken place at 12 p.m on 16.5.12 and the deceased was taken to the government hospital first and latter, he was taken to private hospital. But PW-1, the mother of the deceased gave complaint before the respondent police on 17.5.12 at 5.30 a.m. The distance between the police station and the place of occurrence is 7 k.m only. But there was no explanation by the prosecution for the delay in lodging the complaint. It is further found from the deposition of PW-1 to PW-3 that weapon used by the accused is wooden log. Whereas, PW-2 Moorthy, the father of the deceased was admitted his son in the Government Hospital, Trichy where Ex-P25 Accident Register was recorded by the duty doctor namely Dr.P.Archana and in the accident register it was recorded that the weapon used is iron rod. Further, Ex-P24 Accident Register issued by the private hospital namely Maruthi hospital, Trichy wherein also it was mentioned that the deceased was assaulted by known person using iron rod. Now, two things to have to be answered by the prosecution that if the version of the PW 2 in his evidence that the accused has assaulted the deceased by wooden log, the PW2 should have mentioned that name of the accused and the wooden log (weapon used by the accused) at the time of registration of exhibit P24 and 25 accident registers. But on a perusal of Ex.P24 and 25 disclose that a known person was attacked the deceased. Therefore, the evidence of PW2 cannot be the basis for convicting the accused. Apart from that the prosecution has not recovered the iron rod stated to have been used as weapon for assaulting the deceased. The non recovery of iron rod is a fatal to the case of the prosecution.

21.Further it is found that the court below has drawn inference from the version of PW-5 that the prosecution case has been proved. Firstly the version of PW-5 is that on 16.05.2012, she saw the accused had quarrel with his wife. She further deposed that the accused was having the habit of consuming alcohol. But during her cross she admitted that she is having enmity with the accused Muthuraman and she further admitted that she and her husband used to sell illicit arrack and in this regard they are having criminal cases. Whereas, DWs 1 and 2 were examined on the side of the accused and they deposed that the accused is a good character person and he is used to maintain his family in a decent manner and he had been leading a very decent life in that area. Thus the version of PW-5 is discrepant and contrary to the version of DWs 1 and 2 and hence not trustworthy. Therefore the conviction of the accused by the learned Judge by relying upon the evidence of PW5 is improper.

22.In respect of the seizure of M.O-1, PW13 the investigation officer stated that during his cross examination that there was no blood stain in M.O.1. If that be the case of the prosecution, the seizure of M.O.1 itself is doubtful.



23. In this case, going through the evidences and documents produced by the prosecution, the investigation conducted by the prosecution is improper. Now we have to see that whether there is an unexplained delay in lodging complaint Ex-P1 at 5.30.am on 17.05.2012. Though the occurrence stated to have been taken place at 12.pm on 16.05.2012 and therefore there was a delay of 5 ½ hours in lodging the complaint and for that there was no explanation by the prosecution. For this unreasonable and inordinate delay absolutely no explanation on the part of the prosecution that too the distance between the police station and the place of occurrence is only 7 K.M. In this regard it is relevant to refer the Judgment of the Hon'ble Apex Court reported in State of Himanchal Pradesh Vs. Prem Singh: AIR 2009 (SC) Page 1010 is extracted below:-

"This is trite law that Delay in lodging FIR more often than not, results in embellishment and exaggeration, which is creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to be filed more promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same for the reason that in case the substratum of the evidence given by the complainant/informant is found to be unreliable, the prosecution case has to be rejected in its entirety."

24. As per as the criminal cases are concern, the investigation officer is expected to have a diligent investigation in a scientific manner. Here, PW-13, the investigation officer is failed to prove the case beyond reasonable doubt.

25. The learned Judge has convicted the accused on assumption and presumption by holding the accused guilty that there are possibilities to murder the deceased Madesh.

26. Further the evidence of chance witness is to be scrutinized with utmost care as held by the Hon'ble Supreme Court in **(2016) 10 Supreme Court cases page 220:**

Criminal Trial - Witness - Interested/Partisan witness - Chance witness - Evidence of either kind of witness - When can be relied upon - Held, evidence of interested witness needs to be scrutinized with utmost care - It can only be relied upon if the evidence has a

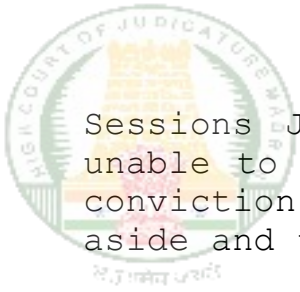


ring of truth to it, is cogent, credible and trust worthy - Also, as to chance witness, it is to be seen that although evidence of a chance witness is acceptable in India, Yet the chance witness has to reasonable explain his presence at that particular point more so when his deposition is being assailed as being tainted.

Criminal Trial - Investigation - Generally - Duty of Investigating officer dealing with a murder case - What should be - Held, investigating officer, dealing with a murder case, is expected to be diligent, truthful and fair in his approach and his performance should always be in conformity with the police manual and a default or breach of duty may prove fatal to the prosecuting case - murder trial - Death by shooting - in the present case, the investigation was carried out with unconcerned and uninspiring performance - There was no firm and sincere effort with the needed zeal and spirit to bring home the guilt of the accused - Penal Code, 1860, S.302.

27. So, in this case PWs 1 to 3 are interested witnesses and therefore the conviction of the accused by the trial court on the basis of evidence of PWs 1 to 3 must go. Further, in this case, the investigation was carried out in a lethargic manner. The prosecution has failed to give explanation for the non-examination of Ex-P25 A.R. entry doctor and the non-examination of the said doctor is a fatal to the prosecution case. Apart from all the above, it is pertinent to mention here that the family of the deceased Madesh, including the deceased used involve in the cases of robbery and theft and there are criminal cases against them in other states also. Therefore the character of the deceased is not good and therefore, there is a possibility of murder the deceased by some rival group. But the prosecution has not investigated the case in that aspect. The approach of the investigating officer in recording the statement of witnesses, collecting the evidence and preparation of sit map has remained unmindful. The investigating officer, dealing with a murder case, is expected to be diligent, truthful and fair in his approach and his performance should always be in conformity with the police manual and a default or breach of duty may prove fatal to the prosecution case. We may hasten to add that in the present case the investigation was carried out with unconcerned and uninspiring performance. We fell that there are no compelling and substantial reasons to concur with the judgment of the trial Court.

28. In the light of what is stated above, we hold that the prosecution has failed to establish the guilt beyond all reasonable doubts. Though prosecution has relied on direct evidence, the same has not been established. The learned Principal



Sessions Judge failed to consider all these aspects and we are unable to concur with the conclusion arrived at. Accordingly, the conviction and sentence imposed on the accused/appellant are set aside and the criminal appeal is allowed.

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29. In the result, the criminal appeal is allowed and conviction and sentence imposed on the appellant is hereby set aside and the appellant is acquitted and he is directed to be set at liberty forthwith unless his presence is required in connection with any other case. Fine amount paid if any by the appellant shall be refunded to him.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

vsa/skn

To

1. The Principal Sessions Judge, Trichy.
2. The Chief Judicial Magistrate, Trichy,
- 3 The Judicial Magistrate No.II, Karur.
- 4 The Inspector of Police,
Edamalaipattiputhur Police Station,
Trichy.
- 5 The Superintendent, Central Prison,
Tiruchirappalli.
- 6 The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.S.Ramasamy, Advocate Sr.No.57821

GJM/MR/SAR-I-23.2.17-9P-8C

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