**Bail Slip**

P.Nagendran, S/o. Pannerselvam, 2nd Accused was released on bail by the order of this Court dated 29/01/2013 made in MP(MD)No.1 of 2013 in CrI.A(MD)No.10 of 2013.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR**AND****THE HONOURABLE MR.JUSTICE V.S.RAVI**CrI.A(MD)No.10 of 2013andCrI.A(MD)No.371 of 2013i) CrI.A(MD)No.10 of 2013

P.Nagendran

.. Appellant / Accused No.2

ii) CrI.A(MD)No.371 of 2013

Mariyasamy @ July

.. Appellant / Accused No.1

Vs.

State Rep. By
The Inspector of Police,
Gandhi Market Police Station,
Trichy District.
(In Crime No.19 of 2007)

.. Respondent / Complainant
(in the above mentioned both
Criminal Appeals)

PRAYER: The above mentioned Criminal Appeals filed under Section 374 of Cr.P.C., praying this Court, to call for the records connected with Judgment dated 30.06.2008, delivered in S.C.No.154 of 2007, on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.II) Trichy and to set aside the same and to acquit the appellants and to pass such further orders, as this Court may deem fit and proper in the circumstances of the case.

For Appellants

: Mr.P.Muthu Vijaya Pandian, Advocate
(in CrI.A.(MD)No.10 of 2013)
Mr.M.Daneil Manoharan, Advocate
(in CrI.A.(MD)No.371 of 2013)

For Respondent

: Mr.K.S.Duraipandian,
Additional Public Prosecutor
(in the above mentioned both
Criminal Appeals)



JUDGMENT

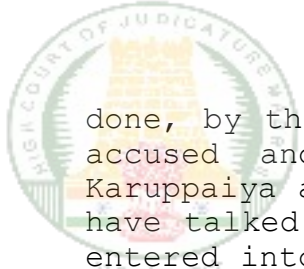
The appellants are the accused Nos.1 and 2 on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.II) Trichy. The first accused has been charged for the offence under Sections 120(b), 450, 302 r/w 34 and 323 I.P.C., and the second accused has been charged for the offence under Sections 120(b), 450, 302 r/w 34 I.P.C. The Trial Court, by Judgment dated 30.06.2008, convicted the accused Nos.1 and 2, for the offence under Section 450 I.P.C., and sentenced them to undergo Rigorous Imprisonment for five years each and also imposed the fine amount of Rs.500/- each and, in default, to undergo Rigorous Imprisonment for the period of one month each and convicted the first accused for the offence under Section 302 I.P.C., and sentenced him to undergo Life Imprisonment and also, imposed the fine amount of Rs.500/- and in default, to undergo Rigorous Imprisonment for the period of one month and convicted the second accused for the offence under Section 302 r/w 34 I.P.C., and sentenced him to undergo Life Imprisonment and, imposed the fine amount of Rs.500/- and in default, to undergo Rigorous Imprisonment for the period of one month and convicted the first accused for the offence under Section 324 and sentenced him to undergo Rigorous Imprisonment for the period of six months and imposed the fine amount of Rs.200/- and in default, to undergo Rigorous Imprisonment for the period of one month. Challenging the said conviction Judgment delivered in S.C.No.154 of 2007, the appellants/accused Nos.1 and 2 in Crime No.19 of 2007, are before this Court with the present appeals, praying the above mentioned reliefs.

2.The brief case of the prosecution is as follows;

Before the occurrence, there is an enmity between the deceased Karuppa Pillai @ Karuppaiya and the accused, regarding the eve teasing of Karuppaiya's wife, namely, the P.W.1 Nirmala and due to the previous enmity, on 14.01.2007 at night 10 hours, when the deceased Karuppaiya and the P.W.1 have talked to each other, in their house, the accused Nos.1 and 2 have entered into their house and the second accused has tightened the neck of the deceased, with the help of the Towel and the first accused has assaulted the deceased with Aruval and at that time, the P.W.1 has raised the noise and the first accused has assaulted the P.W.1, on her right hand fingers and the second accused has dragged out the said Karuppaiya, by tightening his neck, with the help of the Towel, to the front side of the house and the P.W.1 has again raised noise and at that time, Shanthi, Sasikumar, Edverd Leiyo and others have come to the place of occurrence and the accused have run away from the place of occurrence, with Aruval and thereby the accused Nos.1 and 2 have committed the said offences, according to the prosecution.

2.1. In order to prove the case of the prosecution, the prosecution has examined 13 witnesses as P.W.1 to P.W.13 and also marked 20 exhibits as Ex.P.1 to Ex.P.20 and also Material Objects as M.O.1 to M.O.9.

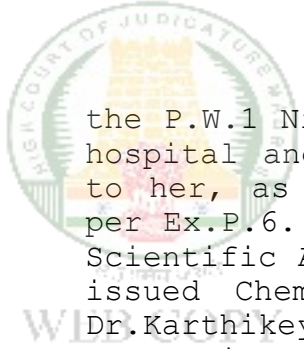
2.2. The P.W.1 Nirmala has stated that she is the wife of Karuppa Pillai @ Karuppaiya and she knows the accused and she has done the work as coolly and the accused Nos.1 and 2, used to eve tease the P.W.1, while she is returning to her house, after finishing the coolly work and later, she has stated to her husband, about the said eve-teasing



done, by the accused and hence, the said Karuppaiya has beaten the first accused and the accused have threatened them to murder the said Karuppaiya and on 14.01.2007 at night 10 hours, the P.W.1 and her husband have talked to each other and at that time, the accused Nos.1 and 2 have entered into their house and the second accused has tightened the neck of the said Karuppaiya, with the help of Towel and the first accused has brutally assaulted the said Karuppaiya, with the help of Aruval and the at that time, the P.W.1 has raised the noise, and the first accused has assaulted the P.W.1, on her right hand fingers and the second accused has dragged out the said Karuppaiya, by tightening his neck, with the help of the Towel and when, she has raised the noise, once again, Shanthi, Edverd Leiyo, Sasikumar have come to the place of occurrence and the accused have run away from the scene of occurrence and she has gone to Trichy Gandhi Market Police Station and lodged the complaint as per Ex.P.1. Further, the P.W.2 Shanthi has stated that she is the sister of the P.W.1 and the deceased Karuppa Pillai @ Karuppaiya is the husband of the P.W.1 and also, she knows the accused and she has also known about the previous dispute between the deceased and the accused and she has seen the occurrence and the said Karuppaiya died, on the spot itself and also, she has stated about the details of the occurrence, as stated by the P.W.1, in her evidence.

2.3. Further, the P.W.3 Edverd Leiyo has stated that his wife name is Shanthi and the deceased Karuppa Pillai @ Karuppaiya and the P.W.1 have resided, nearer to his father's house and he knows the previous dispute between the said Karuppaiya and the accused and on the date of occurrence, he has gone to his father's house and also, he has seen the occurrence and the said Karuppaiya died, on the spot itself and he has stated the details, as stated by the P.W.1, in her evidence. Further, the P.W.4 Savior has stated that the P.W.1 Nirmala is the sister of his wife Shanthi and Karuppaiya is the husband of the P.W.1 and he knows the accused and also, he knows the previous dispute between the said Karuppaiya and the accused and on the date of occurrence, he has heard the noise and hence, he came out from his house and at that time, he has seen the said Karuppaiya and the said Karuppaiya's neck has been tightened, with the help of the Towel, by the second accused and the first accused Julee with Knife and the second accused Nagendran have run away from the place of occurrence and also, he knows that the said Karuppaiya Pillai has been assaulted, by the accused, due to the previous enmity. Further, the P.W.5 Ashok Kumar has stated that on the date of occurrence, he has gone to the place of occurrence and he has seen the dead body of the deceased Karuppaiya and the police have visited the place of occurrence and they have prepared Observation Mahazar as per Ex.P.2 and the P.W.5 and Gurunathan have signed in the said Mahazar and also, they have signed in the Mahazar of Ex.P.3, for the recovery of M.O.1 bloodstained earth, M.O.2 sample earth, M.O.3 bloodstained cement floor and M.O.4 shirt.

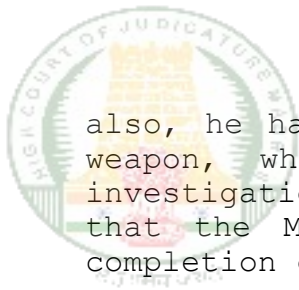
2.4. Further, the P.W.6 Suthaprincepaul has stated that the P.W.6 and Rejendran have talked to each other and at that time, the police have arrested the accused Nos.1 and 2 and they have recorded the confession statement, given by the accused Nos.1 and 2 and the Ex.P.4 is the admissible portion of the confession statement and also, they have recovered M.O.5 Knife in the Seizure Mahazar as per Ex.P.5, from the place, nearer to the bush, nearer to the bridge. Further, the P.W.7 Dr.Muthuraman has stated that he has served as a Doctor in Trichy Annal Gandhi Government Hospital and on 15.01.2007 at early morning 1.30 hours,



the P.W.1 Nirmala, namely, the wife of Karuppaiya has been brought to the hospital and he has examined the P.W.1 and also, he has given treatment to her, as an out-patient and also, he has issued Accident Register as per Ex.P.6. Further, the P.W.8 Tmt.Jeya has stated that he is working as Scientific Assistant Grade II in Forensic Science Lab, Trichy and she has issued Chemical Analysis Report as per Ex.P.7. Further, the P.W.9 Dr.Karthikeyan has stated that he has served as a Doctor in K.A.P.Viswanathan Government Medical College Hospital and on 15.01.2007, he has received the Ex.P.8 Requisition letter, from the Inspector of Police and he has conducted Postmortem, on the dead body of the deceased Karuppa Pillai @ Karuppaiya and issued Postmortem Certificate as per Ex.P.11 and Final Opinion as per Ex.P.12 and the Ex.P.9 is the Viscera Report and Ex.P.10 is the Serology Report.

2.5. Further, the P.W.10 Thiru.Devarajan has stated that he is working as Head Constable in Gandhi Market Police Station and on 15.01.2007, he has submitted the Ex.P.18 First Information Report to the learned Judicial Magistrate No.5 and also, he has submitted the copy of the same to the concerned Higher Officials. Further, the P.W.11 Thiru.Kesavan has stated that he is working as Head Constable in Gandhi Market Police Station and on 19.01.2007, he has handed over the material objects to the Court and he has received the Court letter and handed over the said material objects to Forensic Science Lab and also, he has received the M.O.Nos.6 to 8, namely, the dresses, and the M.O.9 bloodstained towel, as per Ex.P.13 and the Ex.P.16 is the Chemical Analysis Report and the Ex.P.17 is the Serology Report. Further, the P.W.12 Tmt.Shenbaga Devi has stated that she has served as Sub Inspector of Police and on 14.01.2007 at night 23 hours, the P.W.1 Nirmala has appeared before her and lodged the Ex.P.1 Complaint, in oral and the P.W.12 has written the said Complaint and also, the said Complaint has been read over to the P.W.1 and the P.W.1 has stated to her that the said Complaint, written by the P.W.12, is correct and thereafter, she has received the signature of the P.W.1 in the said Complaint and she has registered the case in Crime No.19 of 2007 and also, prepared First Information Report as per Ex.P.18 and she has submitted the said First Information Report to the learned Judicial Magistrate No.5, Trichy and other concerned Higher Officials.

2.6. Further, the P.W.13 Thiru.Sundharraj has stated that he has served as Inspector of Police in Gandhi Market Police Station and on 14.01.2007, he has taken up the case for investigation and he has visited the place of occurrence and prepared Observation Mahazar and Rough Sketch as per Ex.P.2 and Ex.P.19 respectively and also, he has recovered the M.O.1 bloodstained earth, M.O.2 sample earth, M.O.3 bloodstained cement floor and M.O.4 shirt, in the Mahazar as per Ex.P.3 and on 15.01.2007, he has prepared Inquest Report as per Ex.P.20 and also, he has enquired the witnesses and recorded their statements separately. Further, the P.W.13 has stated that on 16.01.2007, at morning 12 hours, he has arrested both the accused and also, he has recorded the confession statement, from the first accused and the Ex.P.4 is the admissible portion of the confession statement and also, he has recorded the confession statement, given by the second accused and he has recovered the M.O.5 Knife, from the first accused, hidden under the bush and also, he has enquired the P.W.7 Doctor, who has given medical treatment to the P.W.1 Nirmala and received the Ex.P.5 Accident Register and also, he has enquired the P.W.9 Dr. Karthikeyan, who has conducted Postmortem, on the dead body of the deceased Karuppaiya and received the Ex.P.11 Postmortem Certificate and

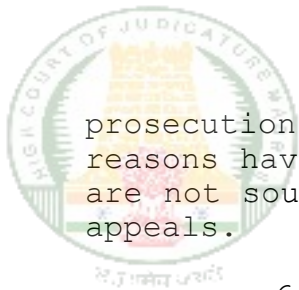


also, he has recorded the statement, given by the P.W.9, by showing the weapon, which has been used in the occurrence and also, in his investigation, the witnesses and the second accused have stated to him that the M.O.9 Towel has been used in the occurrence and after the completion of the investigation, he has filed the final report.

WEB COPY 3. On completion of the evidences on the side of the prosecution, the accused have been questioned under Section 313 of Cr.P.C., as to the incriminating circumstances mentioned in the evidences of prosecution witnesses and they have stated that they are innocent persons and they are not involved in the said occurrence.

4. Having considered all the above materials on record, the Trial Court has convicted the accused Nos.1 and 2, as mentioned in the beginning of this Judgment and challenging the said Judgment of the Trial Court, the appellants/accused have filed the present criminal appeals.

5. It is stated in the Grounds of the above mentioned Appeals, that the Trial Court ought to have rejected the motive alleged by the prosecution. Further, there is no necessity for the appellants/accused to pull out the body from the house. Hence, the appellants have been falsely implicated in the present case. The Trial Court has failed to note that P.W.Nos.1 to 4 are not the eyewitnesses to the occurrence and their evidences are required to be scrutinized with great care and caution. Because of the close relationship and affection, any person in the position of the said witnesses, would naturally, have a tendency to exaggerate or add facts. Further, the close relative witnesses, namely, P.W.Nos.1 to 4 are reported to be standing and watching, though, the accused have previous enmity with the deceased family, and also, the accused have gone to the house of the deceased at 10.00 p.m. The said eyewitnesses have uniformly stated that the second accused has throttled the neck of the deceased, with the help of the Towel and the said eyewitnesses have not tried to stop the accused from doing the same. But the said submission has not been considered by the Trial Court. The P.W.1 has stated in his evidence that the said Aruval has been recovered, from the place of occurrence, but the prosecution has stated that the same has been recovered at certain other place under the bridge. The evidence of the P.W.4 is very much contra to the evidences of the P.W.1 and the P.W.2, and the same has not been considered properly, by the Trial Court. The nature of evidences and placing reliance on their evidences, in convicting the appellants without corroboration would be very dangerous and also, would lead to miscarriage of justice to the appellants. The prosecution has not established the nature of all the injuries and also, the cause for the death. The Trial Court has failed to consider that the P.W.1 has mentioned in her deposition about one injury caused to the deceased, but several injuries have been mentioned in the Postmortem Report. The Trial Court ought to have considered that the police station is situated within 5 meters from the alleged place of occurrence, but in the First Information Report, it has been mentioned that the police station is situated at a distance of 2 Kilometers. Hence, the evidence of the P.W.2 is doubtful. Further, the First Information Report has contained the Court seal on 18.01.2007 and the delay has not been properly, explained by the prosecution. The Trial Court ought to have considered that no independent witnesses have been examined by the prosecution and all the eyewitnesses in the case of the prosecution are relatives, of the deceased and his wife. The P.W. Nos.1 to 3, 7 and 8 are the interested witnesses and close relatives of the deceased and the



prosecution has not proved the case beyond reasonable doubts. The other reasons have been given by the Lower Court, for convicting the appellants are not sound. Hence, the appellants have submitted to allow the present appeals.

6. The points that arise for consideration in the present Criminal Appeals are as follows:-

1) Whether the Lower Court has passed the impugned Judgment, after properly appreciating the entire materials available on record, in the proper perspective?

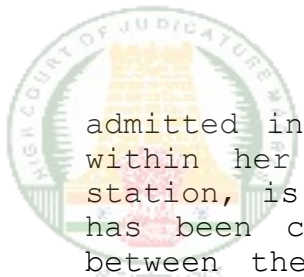
ii) Whether the said Criminal Appeals have to be allowed for the reasons and grounds stated in the Memorandum of Appeals and also for the submissions made on behalf of the above mentioned appellants?

7. Analysis, discussions and findings with regard to the points :-

The learned counsel for the appellants have submitted that the Trial Court has committed error in convicting the appellants on the basis is highly unbelievable, insufficient and unconvincing evidences of the eyewitnesses of the case of the prosecution. The appellants/accused have been wrongly implicated in the commission of the crime, by the prosecution. Further, the learned counsel appearing for the appellants have submitted that when several independent witnesses are available, the prosecution has purposely chosen to examine the eyewitnesses, namely, the P.W.Nos.1 to 4, who are close relatives of the deceased and a whole case rest on the evidences of the said eyewitnesses and their evidences are not clear and cogent. Further, the evidences of the eyewitnesses of the P.W.Nos.1 to P.W.4 have not inspired the confidence to believe the case of the prosecution. There are serious infirmity in the case of the prosecution. Further, the evidences of the eyewitnesses of the case of the prosecution are not clear and cogent, about the offence alleged to be done by the appellants. There are no believable evidences of the eyewitnesses on record to establish the case of the prosecution and hence the case of the prosecution is unbelievable and unreliable.

8. On the other hand, the learned Additional Public Prosecutor has submitted that the reasons given by the Lower Court for recording the Judgment of Conviction against the appellants, are based upon the proper appreciation of the evidences of the eyewitnesses and material records submitted by the prosecution. Further, he has submitted that the evidences of eyewitnesses coupled with Exhibits and Material Objects are clear and satisfactory and also with hypothesis of the guilt of the appellants and the Lower Court has passed well-reasoned and well-merited Judgment.

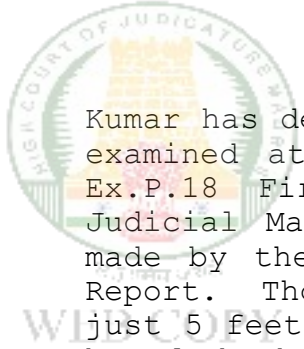
9. The P.W.1 Nirmala has deposed that the deceased Karuppaiya is her husband and she has seen the occurrence and lodged the Complaint as per Ex.P.1. Further, based upon the said Complaint, the Ex.P.18 First Information Report has been prepared by the P.W.12 Sub Inspector of Police. The P.W.12 has deposed that the P.W.1 has lodged the said Complaint, in oral and the P.W.12 has written the said Complaint and received the signature of the P.W.1. Further, the P.W.1 has clearly



admitted in the cross examination that the occurrence has taken place, within her house and the distance between her house and the police station, is 5 feet. However, in the Ex.P.18 First Information Report, it has been clearly stated that there is the distance of 2 Kilometers between the police station and the place of occurrence. Further, the P.W.1 has clearly admitted that she has not stated to the police, during the occurrence, about the existence of light, in the place of occurrence. Further, the P.W.1 has admitted that the P.W.2 Shanthi is her own sister and the P.W.4 is her brother-in-law, namely, the husband of the P.W.2 and the P.W.3 is her uncle's son. Even, the P.W.13 Investigation Officer has admitted that the P.W.Nos.1 to 5 are related to each other and the same has been noted by him, during his investigation conducted, in the present case. On that ground also, it is seen that the evidences of the interested witnesses of the P.W.Nos.1 to 5 have been scrutinized with great care and caution.

10. Further, the P.W.1 has admitted that the occurrence has been seen by the persons, who are living nearer to her house. But, the prosecution has not examined any independent witnesses, in the present case. For, not examining the independent witnesses also, no sufficient and acceptable reasons have been furnished by the prosecution. Further, regarding the motive for the occurrence, the P.W.1 in the Ex.P.1 Complaint, has stated that Julee(A1), son of George has teased her, before one year, before the present Deepavali month of the year, and her husband has questioned the first accused and there arose a dispute between them. It is highly doubtful that the accused have brutally assaulted the husband of the P.W.1, due to the incident that has happened, one year prior to the occurrence, as stated by the P.W.1 in her evidence. Further, the prosecution has not proved the alleged motive, to establish the prosecution case. Further, the P.W.1 has admitted that two years prior to the occurrence, the first accused has assaulted the P.W.1, for which the husband of the P.W.1, namely, the deceased Karuppaiya has assaulted the first accused, with Aruval and an investigation has been conducted and a case has been registered for the said occurrence. Further, in order to establish the said statement of the P.W.1, no acceptable records have been produced in the Court. Further, the prosecution has not filed any such records, relating to the said case, to establish the said statement made by the P.W.1. Further, the P.W.1 has admitted that the P.W.2, namely, her own sister, P.W.3, namely, her uncle's son and the P.W.4 Savior, namely, her brother-in-law have entered into the house of the P.W.1, when, the first accused is assaulting the deceased with Knife. However, the P.W.2 Shanthi has deposed that she has heard noise from the house of the P.W.1 and thereafter, she has gone to the house the P.W.1 and at that time, she has seen the dead body of the deceased Karuppaiya.

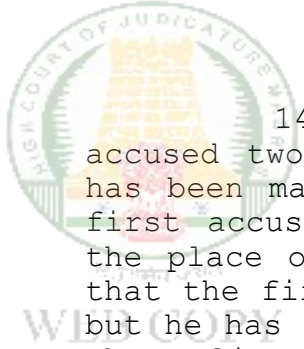
11. Further, the P.W.3 Edvered Leiyo has deposed that the second accused has tightened the neck of the deceased Karuppaiya, with the help of Towel and the first accused has assaulted the deceased, with Knife. However, the police have not recovered the said Towel, used by the second accused, to tighten the neck of the deceased. Even, the P.W.9 Dr.Karthikeyan, who has conducted Postmortem, on the dead body of the deceased Karuppaiya, has deposed that there is no injury, regarding the tightening the neck of the deceased, with the help of Towel. Further, the P.W.4 Savior has admitted that during the course of the occurrence, the P.W.4 has served food to him and he has taken food and only, his wife has informed about the incident and after that only, he has gone outside and heard about the occurrence. Even, the P.W.5 Ashok



Kumar has deposed that he has not seen the occurrence and the police have examined at night 10 hours, on the date of occurrence. Further, the Ex.P.18 First Information Report has been received by the learned Judicial Magistrate on 15.01.2007 at 3.45 a.m., as per the endorsement made by the learned Judicial Magistrate, in the said First Information Report. Though the P.W.1 has clearly admitted that the police station is just 5 feet away from her house, namely, the place of occurrence and she has lodged the Complaint as per Ex.P.1 to the P.W.12 Sub Inspector of Police, immediately, after the occurrence. However, the Ex.P.18 First Information Report has been received only on 15.01.2007 at 3.45 a.m., by the learned Judicial Magistrate.

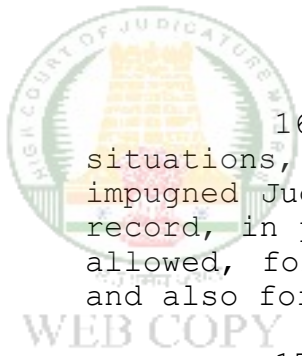
12. Further, the P.W.6 Sudhaprincepaul has admitted that he has not seen the occurrence and the deceased Karuppaiya is related to him and the P.W.1 is the wife of the deceased. Further, the P.W.6 has deposed that the accused have given confession statement, to the police and the police have recovered the M.O.5 Knife, in the Seizure Mahazar as per Ex.P.5. However, the P.W.1 has deposed in her evidence that the Knife has been used by the first accused to assault the deceased and the said Knife has been recovered by the police from the place of occurrence itself, immediately, after the occurrence. Hence, there are vital contradictions between the evidences of the P.W.1 and the P.W.6, regarding the recovery of the material objects. Further, the P.W.9 Dr. Karthikeyan has deposed that he has conducted Postmortem, on the dead body of the deceased Karuppaiya and issued Postmortem Certificate as per Ex.P.11 and also, he has pointed out five injuries, in the said Ex.P.11. However, the P.W.1 has deposed that the first accused has assaulted the deceased, with the help of M.O.5 Knife and the second accused has strangulated the deceased, with the help of Towel. Further, the P.W.9 Doctor, who has conducted Postmortem, on the dead body of the deceased Karuppaiya, has clearly deposed that except the above mentioned injuries, there are no other injuries on the dead body of the deceased. However, the P.W.1 has deposed that the first accused has assaulted the deceased Karuppaiya, on his left hand side, below the neck only, with the help of M.O.5 Knife. Hence, the P.W.1 has not accounted for the five injuries, as pointed out by the P.W.9 Doctor and also, the medical evidence also does not support the theory of the prosecution, that the second accused has strangulated the neck of the deceased, with the help of Towel.

13. Further, the P.W.13 Thiru.Sundharraj, Inspector of Police has deposed that in the Ex.P.11 Postmortem Certificate, it has not been stated about abrasion injury, on the body of the deceased Karuppaiya. Further, the P.W.13 Inspector of Police has clearly deposed that in the Ex.P.19 Rough Sketch and Ex.P.2 Observation Mahazar, he has not stated about the M.O.9 Towel and he has not collected any material objects, to establish the said Towel, used by the second accused, to strangle the deceased. Further, as per the Ex.P.19 Rough Sketch, it is seen that the dead body of the deceased has been found lying in the public road. But, no independent evidences have been examined, in order to establish the occurrence. Further, the P.W.13 has admitted that he has arrested the accused, in the place, where the public persons, used to go. Further, the P.W.1 has deposed that the first accused has dropped the M.O.5 Knife, in the place of occurrence itself, and whereas, the P.W.13 has deposed that he has recovered the said Knife, before the presence of the witnesses, in the Seizure Mahazar, as per the Ex.P.5, on 16.01.2007, at 14 hours.



14. Further, the P.W.13 has deposed that he has arrested the accused two days, after the occurrence and the confession and recovery has been made by him. However, in Ex.P.3 Mahazar, it is seen that the first accused's shirt has been recovered on 15.01.2007 at 1 hour, from the place of occurrence, by the P.W.13. Further, the P.W.1 has admitted that the first accused has not put his shirt, in the place of occurrence, but he has put Lungi, in the place of occurrence and she has given it to the police. However, the said Lungi has not been marked as material object. Further, the P.W.1 has admitted that her dress has got bloodstain and however, the said bloodstained dress of the P.W.1 has not been recovered by the police. Further, the P.W.1 has admitted in her cross examination that there is a murder case, going on, as against her, for the murder caused to Viswanathan and she has been cited as accused No.1. Further, as per the evidence of the P.W.1, it is seen that the P.W.1 is an accused in the criminal proceedings of the murder case. Hence, the nature of criminal proceedings are known to the P.W.1. Further, with regard to the recovery of the said Lungi and the bloodstained dresses of the P.W.1, no Mahazar has been marked on behalf of the prosecution and in such circumstances, it is highly doubtful to believe the evidence of the P.W.13 Investigation Officer, regarding the arrest, confession and recovery, made by him.

15. Further, in the present case, on a careful consideration of the evidences of the eyewitnesses, it is seen that the presence of the eyewitnesses are not natural and also, their evidences are not strong, reliable and free from any blemish. Further, the evidences of the eyewitnesses have not been corroborated with the evidences of the other prosecution witnesses and hence, the evidences of the said eyewitnesses are not found to be wholly reliable. The provisions of Section 134 of the Evidence Act clearly states that no particular number of witnesses shall in any case be required for the proof of any fact. Plaurity of evidence is not at all required for bringing home the guilt of the accused. It is the quality of the evidence and not the plaurity of witnesses which is important in the appraisal of evidence. Even if a single witness can be sufficient to prove the guilt of the accused, if found entirely reliable. Evidence has to be weighed and not counted. It is settled proposition of law of evidence that it is not the number of witnesses that matters but it is the substance. It is also not necessary to examine a large number of witnesses, if the prosecution can bring home the guilt of the accused, even with a limited number of witnesses. However, in the present case, the evidences of the eyewitnesses are not clear, cogent and reliable to establish the case of the prosecution. The Court has to examine as to whether the 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 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, so 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 root of the matter, and shake the basic version of the prosecution witness. However, in the present case, it is evident that the prosecution side evidences, exhibits and material objects are not clear, cogent and reliable, to establish the case of the prosecution, beyond elements of reasonable doubts.



16. For the above mentioned reasons, facts and circumstances and situations, it is held that the Lower Court has not delivered the impugned Judgment, after properly appreciating the materials available on record, in proper perspective and the present Criminal Appeals have to be allowed, for the reasons and grounds stated in the Memorandum of Appeals and also for the submissions made on behalf of the appellants herein.

17. In the result, this CrI.A(MD)No.10 of 2013 and CrI.A(MD) No.371 of 2013 are allowed and the conviction and sentence imposed by the learned Additional District and Sessions Judge (Fast Track Court No.2), Trichy, by Judgment dated 30.06.2008 delivered in S.C.No.154 of 2007 is set aside and the accused No.1/Mariyasamy @ July and accused No.2/Nagendran in Crime No.19 of 2007 are acquitted. The bail bond, if any, executed by the accused shall stand cancelled and fine amount, if any, paid by the appellants shall be repaid to them and the appellant in CrI.A(MD)No.371 of 2013/ accused No.1 shall be released forthwith, if he is not required, in connection, with any other case and the appellant in CrI.A(MD)No.10 of 2013/accused No.2 has been already released on bail.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar.

To

1. The Additional District Sessions Judge, (Fast Track Court No.2), Trichy.
2. The Judicial Magistrate No.V, Trichy.
3. Do thro'the Chief Judicial Magistrate, Trichy
4. The Inspector of Police, Gandhi Market Police Station, Trichy,
- 5.The Superintendent, Central Prison, Trichy.
(In duplicate for communicate to Detenu)
6. The Officer- in-charge,R.S.Puram Police Station, Coimbatore.
7. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.
- 8.The Director General of Police, Mylapore, Chennai-600 004.
- 9.The Joint Secretary to Government,
Public (Law and Order)Department,
Fort St.George, Chennai-600 009.

Copy to: The Section Officer,
Criminal Section,
Madurai Bench of Madras High court, Madurai.

+1CC to Mr.P.Muthuvijayapandian, Advocate, SR.No. 9907

+2CC to Mr.R.Alagumani, Advocate, SR.No. 3974,9950

JUDGMENT
MADE IN

CrI.A(MD)No.10 of 2013
and

CrI.A(MD)No.371 of 2013
19.02.2016