

**Bail Slip**

The Appellant/Accused namely P.Murugan, was released on bail by this Honourable Court made in MP(MD)No.1/2013 in Cr1.A(MD) No.235/2013 dated 19.11.2013.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED: 11.04.2016****CORAM:****THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR****AND****THE HONOURABLE MR.JUSTICE V.S.RAVI****Cr1.A(MD)No.235 of 2013**

Murugan

.. Appellant/Accused(single)

Vs.

State rep. By
The Inspector of Police,
Maniyachi Police Station,
Tuticorin District.
(Crime No.3 of 2012)

.. Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., praying this Court, to call for the records from the Trial Court, and to set aside the Judgment delivered in S.C.No.269 of 2012 dated 01.07.2013 on the file of the learned II Additional Sessions Judge, Tuticorin District .

For Appellant : Mr. V. Kathirvelu, Senior Advocate
for Mr. K.Prabhu, Advocate.

For Respondent : Mr.K.S.Duraipandian,
Additional Public Prosecutor

Judgment reserved on : 19.01.2016

Judgment pronounced on : 11.04.2016

**JUDGMENT**

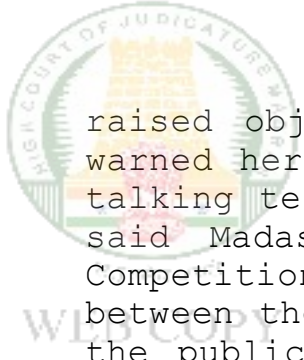
The appellant is the sole accused in the case filed in S.C.No.269 of 2012 (Crime No.3 of 2012) on the file of the learned II Additional Sessions Judge, Tuticorin. The accused has been charged for the offence under Sections 294(b) and 302 I.P.C. The Trial Court, by Judgment dated 01.07.2013, convicted the appellant/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.2,000/- and in default, to undergo Rigorous Imprisonment for the period of two months and acquitted the accused for the offence under Section 294(b) I.P.C. Challenging the said conviction Judgment delivered in S.C.No.269 of 2012, the appellant/accused in Crime No.3 of 2012, is before this Court with the present appeal, praying the above mentioned relief.

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

P.W.1 Guildamary is the wife of the deceased Madasamy and the accused Murugan is her uncle, by relationship and on 16.01.2012, at 5.00 p.m., there arose a wordily quarrel between the said Madasamy and the accused at the Sports Event ground, regarding the illicit intimacy between the accused and the P.W.1 and on the same day, at 6.00 p.m., the accused has scolded the said Madasamy, by using filthy languages and the accused has gone into his house and suddenly, the accused has come out from the house and brutally assaulted the said Madasamy, with the help of Sickie and on hearing the loud noise, the public, who have seen the Sports Event, came to the place of occurrence and the accused has run away from the scene of occurrence, with the said Sickie and thereafter, the P.W.1's uncle's son Maickel has taken the deceased to Ottapidaram Government Hospital in the Mini Door Auto and the Doctor informed that the deceased has already expired and thereby the accused has committed the said offences, according to the prosecution.

2.1. In order to prove the case of the prosecution, the prosecution has examined 18 witnesses as P.W.1 to P.W.18 and also marked 18 exhibits as Ex.P.1 to Ex.P.18 and also Material Objects as M.O.1 to M.O.10.

2.2. P.W.1 Guildamary has stated that the deceased Madasamy is her husband and she has done the work, as coolly and her husband has done the work, as a tailor and she has got two female children and the accused is her uncle, by relationship and the P.W.1 and the wife of the accused, namely, Parvathy, used to go together, to cement company, to work as coolly workers and the P.W.1 and the said Parvathy have got close relationship and based upon that the accused, namely, her uncle, used to come to her house, when her husband has left from the house and thereafter, the P.W.1's father-in-law, namely, the P.W.10 Annamariyan has



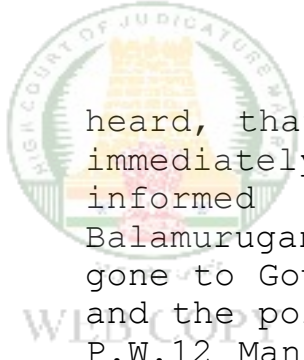
raised objection, with regard to P.W.1's misbehaviour and also, warned her, and thereafter, the accused and the P.W.1 are not in talking terms, and on 16.01.2012, at 5.00 p.m., the P.W.1 and the said Madasamy have gone to see the Sports Event, at Sports Competition ground and there also, happened a wordily quarrel between the accused and the said Madasamy, at the said ground and the public have separated both of them and sent to their houses and the said Madasamy has come to the house and at 6.00 p.m., they have gone nearer to the house of Subbaiya, along with their children for seeing the Sports Event and at that time, the accused has seated in front of his house and the accused has seen them and scolded the said Madasamy, with filthy languages and also, he has gone into his house and he has come out from his house, and he has brutally assaulted the said Madasamy, with Sickle and the P.W.1 and her children have cried at the place of occurrence and after hearing the noise, the public have come to the place of occurrence and the accused has run away from the scene of occurrence, with Sickle and her uncle's son Maickel has called the auto, by phone and thereafter, the said Madasamy has been brought to Ottapidadaram Government Hospital and the doctors have declared that the said Madasamy has already expired and the P.W.1 has lodged the complaint as per Ex.P.1, to Maniyachi police and the P.W.1 and Kamalesan have signed in the said Complaint and she has identified the M.O.1 Sickle.

2.3. Further, the P.W.2 Dr. Seril has stated that he has served as Doctor in Ottapidadaram Government Hospital and on 16.01.2012, at 7.25 p.m., Madasamy has been brought to the hospital, by Durairaj and the said Madasamy has been alleged to be assaulted by one known male person and when he has examined the said Madasamy, the said Madasamy has already expired and immediately, they have informed to the police and after 45 minutes, they have received the requisition letter from the police, and the dead body of the deceased Madasamy has been put in the Mortuary and on 17.01.2012, at 11.30 a.m., he has received the Ex.P.2 requisition letter from the Inspector of Police, Maniyachi Police Station and he has conducted Postmortem on the dead body of the deceased Madasamy and also, he has issued Postmortem Certificate as per Ex.P.3 and in the said Postmortem Certificate, he has given his opinion that the deceased appeared to have died 12-24 hours prior to Postmortem, due to shock and hemorrhage, due to fatal head injury. Further, the P.W.6 Kamalanesan has stated that the P.W.1 Guildamary is his sister and the deceased Madasamy is the husband of the P.W.1 and also, he knows the accused and on 16.01.2012, he has seen the Sports Competition and at that time, he has heard the noise and thereafter, he has gone to the place, where the deceased Madasamy has expired and he has brought the deceased to the hospital, in the Mini Door Auto and the police have recorded the statements from the P.W.1, P.W.6 and the P.W.7, namely, her elder sister Velankanni, in the hospital and he has also signed in the Ex.P.1 Complaint.



2.4. Further, the P.W.7 Velankanni has stated that the P.W.1 Guildamary is her sister and the P.W.6 is her brother and the deceased Madasamy is the husband of the P.W.1 and she knows the accused and on 16.01.2012, in the Sports ground, a little dispute has happened between the husband of the P.W.1 and the accused and thereafter, the P.W.1 and the said Madasamy have gone to the house and thereafter, she has heard that the said Madasamy has been brutally assaulted and she has come to the place of occurrence and at that time, the accused has run away from the place of occurrence, with M.O.1 Sickie and immediately, she has seen the deceased and the deceased has been brutally assaulted and also, she has caught hold of the head of the deceased and the blood has come from the head of the deceased and they have brought the deceased Madasamy, to Ottapidaram Government Hospital in the Mini Door Auto and the police have enquired her. Further, the P.W.8 Maickel has stated that the deceased Madasamy is his brother's son and he knows the accused and he has heard that the deceased Madasamy has been brutally assaulted and they have put the deceased in the Mini Door Auto and also, brought the deceased to Ottapidaram Government Hospital. Further, the P.W.9 Manimaran has stated that on the next day of Pongal festival, the P.W.9 and his brother Ashok have talked to each other and the police have visited the place of occurrence and they have prepared Observation Mahazar as per Ex.P.4 and he has also signed in the said Mahazar and also, they have recovered M.O.2 bloodstained earth, M.O.3 sample earth and M.O.4 chapel, from the place of occurrence, in the Athatchi as per Ex.P.5. Further, the P.W.10 Annamariyan has stated that he is residing in Kundala Estate, near Moonar, Kerala State and also, he has worked in the Estate and the deceased Madasamy is his son and the P.W.1 is the wife of the deceased Madasamy and the accused is the husband of his sister and on 16.01.2012, his elder son Balamurugan has called him, by phone, to come to the house, immediately and he has come to his house and thereafter, the P.W.7 Velankanni, namely, the sister of his daughter-in-law, has called him, by phone and he has heard about the incident and he has gone to Ottapidaram Government Hospital and he has seen the dead body of the said Madasamy, in the said hospital and on the next day, he has gone to Kerala.

2.5. Further, the P.W.11 Jeyalakshmi has stated that she is residing with her husband, namely, the P.W.10, in Kundala Estate, Moonar, Kerala State and the deceased Madasamy is her son and the deceased Madasamy is the husband of the P.W.1 and the accused is her brother and her son Madasamy has married the P.W.1 and the accused has disturbed the P.W.1 and the P.W.1 has stated about that, to the said Madasamy, and thereafter, the said Madasamy has questioned the accused, but the accused has refused to give any explanation and on 16.01.2012 also, the accused has disturbed the P.W.1 and also, the P.W.1 has stated about the disturbance given by the accused, to the said Madasamy and she has



heard, that due to the said reason, the incident has happened and immediately, after the occurrence, the daughter of the accused has informed about the occurrence to his elder son, namely, Balamurugan and on the next day, the P.W.11 and his husband have gone to Government Hospital and thereafter, she has gone to Kerala and the police have enquired her, about the incident. Further, the P.W.12 Manikandan has stated that he knows the deceased Madasamy, P.W.1 and the accused and on 16.01.2012, the Sports Competition has been held in their village and at that time, there arose a dispute between the accused and the deceased Madasamy and the villagers have separated them and thereafter, he has heard about the incident and he has gone to the place of occurrence and the police have enquired him. Further, the P.W.Nos.3 to 5 and 13 have been treated as hostile witnesses, as they have not supported the case of the prosecution.

2.6. Further, the P.W.14 Thiru.Easwara Prasath has stated that he has served as Head Constable in Maniyachi Police Station and on 16.01.2012 at 22.00 hours, he has gone to the Judicial Magistrate No.I Court, Kovilpatti, for submitting the Ex.P.11 Express First Information Report and the learned Judicial Magistrate No.I, Kovilpatti has taken leave on that day and hence, he has submitted the said Express First Information Report to the learned Judicial Magistrate No.II, Kovilpatti on 17.11.2012, at early morning 3.00 hours and also, he has reported it to Maniyachi Police Station and the Ex.P.6 is the Passport. Further, the P.W.15 Thiru.Mohanraj has stated that he has served as Senior Grade Police Constable and on 16.01.2012, at 21.30 hours, he has received the requisition for conducting Postmortem, on the dead body of the deceased Madasamy and also, he has handed over the dead body of the deceased to Ottapidaram Government Hospital and after the completion of the said Postmortem, he has recovered M.O.Nos.5 to 8, namely, the dresses of the deceased and thereafter, he has handed over the dead body of the deceased to the relatives and the Ex.P.7 is the Passport. Further, the P.W.16 Thiru.Jaffarsadhick has stated that he has served as Village Administrative Officer and Mani has served along with him, as Village Assistant and on 18.01.2012 at 7.00 a.m., he has gone along with the said Mani, Village Assistant, to Maniyachi, for attending his work and at that time, the Inspector of Police has arrested the accused Murugan, in the backside of the Kandhasampuram bus stop and the Inspector of Police has recorded the confession statement, given by the accused and the Ex.P.8 is the admissible portion of the said confession statement and at 9.00 a.m., the Inspector of Police has also recovered the M.O.1 Sickie, in the Athatchi as per Ex.P.9, from the accused, which has been hidden in the old building, near Melapandiyapuram railway gate, in their presence and at 10.00 a.m., the Inspector of Police has recovered the M.O.Nos.9 and 10, namely, the dresses of the accused, from the accused, in the police station, in their presence and they have signed in the said confession statement and



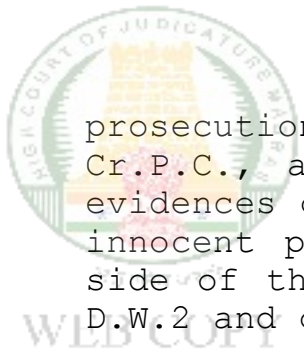
also Athatchi.

2.7. Further, the P.W.17 Thiru.Kaliyappan has stated that he has served as Special Sub Inspector of Police in Maniyachi Police Station and on 16.01.2012 at 19.25 p.m., based upon the Death Intimation received by him from Ottapidaram Government Hospital, he has gone to the said hospital and received the Death Intimation Report and he has recorded the statement from the P.W.1 Guildamary, namely, the wife of the deceased Madasamy, at night between 20.00 hours to 20.30 hours and he has read over the said statement to the P.W.1 and thereafter, the P.W.1 has signed in the said statement and at 21.30 hours, he has registered the case in Crime No.3 of 2012 and prepared First Information Report as per Ex.P.11 and he has submitted the said First Information Report to the learned Judicial Magistrate No.I, Kovilpatti, through the P.W.14 Easwaranprasath and also, he has submitted the copies of the said First Information Report to the concerned Higher Officials and on 18.01.2012 at 7.00 a.m., he has helped to Inspector of Police, for the arrest of the accused and also, the P.W.17, Village Administrative Officer, Assistant and police 2371 Maharajan have signed in the confession statement, given by the accused and he has been enquired by the Inspector of Police.

2.8. Further, the P.W.18 Thiru. Dhanabalan, Inspector of Police has stated that on 16.01.2012, he has taken up the case for investigation and at 10.00 p.m., he has visited the place of occurrence and he has prepared Observation Mahazar as per Ex.P.4 and the P.W.9 Manimaran and Ashokumar have signed in the said Observation Mahazar and also, he has prepared Rough Sketch as per Ex.P.12 and also, he has recovered the M.O.2 bloodstained earth, M.O.3 sample earth and M.O.4 chappel, from the place of occurrence and on 17.01.2012, he has prepared Inquest Report as per Ex.P.13 and also, he has recorded the statements from the witnesses. Further, the P.W.18 has stated that on 18.01.2012 at 7.00 a.m., he has arrested the accused, with the help of the P.W.17 Thiru.Kaliyappan and police Maharajan, at the backside of Kandhasampuram bus stop, in the presence of P.W.16 Thiru.Jaffarsadhick, Village Administrative Officer and Village Assistant and thereafter, he has recovered the M.O.1 Sickle, which has been hidden by the accused, from the old building near Melapandiyapuram Railway Station and also, he has recovered the dresses of the accused in the Athatchi and the above said witnesses have signed in the said confession statement and Mahazar and he has handed over the material objects to the Court and the Ex.P.16 and Ex.P.17 are the Chemical Analysis Reports and Ex.P.18 is the Serology Report and he has enquired the P.W.2 Doctor, who has conducted Postmortem on the dead body of the deceased Madasamy and received the Ex.P.3 Postmortem Certificate and after, the completion of his investigation, he has filed final report.

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3. On completion of the evidences on the side of the



prosecution, the accused has been questioned under Section 313 of Cr.P.C., as to the incriminating circumstances mentioned in the evidences of prosecution witnesses and he has stated that he is an innocent person and he is not involved in the case and on the side of the defence, 2 witnesses have been examined as D.W.1 and D.W.2 and one exhibit has been marked as Ex.D.1.

4. Having considered all the above materials on record, the Trial Court has convicted the accused, as mentioned in the beginning of this Judgment and challenging the said Judgment of the Trial Court, the appellant/accused has come forward with the present criminal appeal.

5. It is stated in the Grounds of Appeal, that the Trial Court ought to have acquitted the appellant since the P.W.1 in the present case is the wife of the deceased and also, an interested witness and she claims to be an eyewitness in the present case. Even on the date of occurrence, the P.W.1 has admitted that she has seen the accused in the police station and hence, the arrest and recovery from the accused is absolutely incorrect. The Lower Court ought to have acquitted the appellant since the P.W.1 has deposed before the Court that the occurrence took place nearby one Subbaiah house, whereas in the First Information Report, it has been mentioned that the occurrence has taken place, in front of the house of the deceased. The manner of occurrence stated by the P.W.1 in the Ex.P.1 is totally different from the evidence of the P.W.1 given in the present case. The nature of injury suffered by the deceased is different from the oral evidence of the P.W.1 and also, as pointed out in the Postmortem Certificate. Though, the independent witnesses are available in the scene of occurrence, no independent witnesses have been examined as eyewitnesses in the present case. The evidences of the prosecution witnesses are not clear to establish the crime alleged to be committed by the accused. The testimony of P.W.1 is not clear, cogent and convincing. The Lower Court has taken the moral view and convicted the accused. The Judgment of the Lower Court has to be set aside, since the Lower Court has travelled beyond the scope of the evidences. The Lower Court has not properly appreciated the evidences in the present case and also the investigation is not properly done in the present case, and the case has not been proved beyond reasonable doubts, as against the appellant herein.

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

- 1) Whether the Lower Court has passed the impugned judgment, after properly appreciating the materials brought on record, in the proper perspective?

- ii) Whether the present Criminal



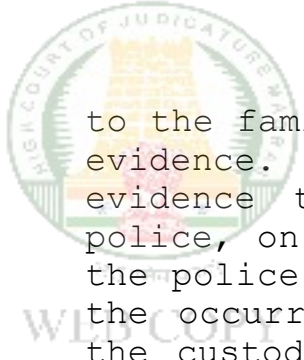
Appeal has to be allowed for the reasons and grounds stated in the Memorandum of Appeal and also for the submissions made on behalf of the above mentioned appellant?

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

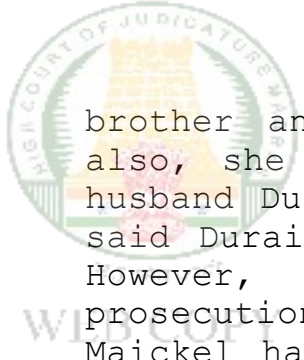
The learned senior counsel for the appellant has vehemently submitted that the evidence of the eyewitness is not clear and cogent and the materials on record, have not established the case of the prosecution beyond reasonable doubts, regarding, the offence alleged to be committed by the appellant. Further, the whole case has been filed on the evidence of the only one interested witness, who is none else than, the wife of the deceased. Further, the learned senior counsel for the appellant has submitted that it is totally unsafe to rely on the testimony of the highly interested witness, due to the peculiar circumstances of the present case, and hence the said evidence may be discarded. The occurrence is said to have taken place during evening time, in the presence of so many public persons. Hence, the evidence of interested witness, examined on behalf of the prosecution, has to be considered with much care and caution. Further, there are improvements in the case of the prosecution and also in the evidences of the prosecution. Further, the direct enmity between the deceased and the accused has not been, properly, established, as pointed out, on behalf of the prosecution. The prosecution has not established the enmity to the extent to commit murder and the reasons furnished by the prosecution are unbelievable. The motive part of the prosecution is not established, properly. The possibilities of developing the case of the prosecution can not be ruled out. The learned senior counsel for the appellant has repeatedly pointed out that the evidence of P.W.1 can not be accepted as the eyewitness, as the same is not natural and believable. Further, the learned senior counsel for the appellant has submitted that the case of the prosecution has not been substantiated beyond reasonable doubts, as against the appellant and therefore, the judgment of the Trial Court is liable to be set aside.

8. On the other hand, the learned Additional Public Prosecutor for the respondent has submitted that the evidences of prosecution are quite natural and there are no reasons to disbelieve the same. Having an overall consideration of the facts, he has further submitted that the prosecution has proved the case as against the above mentioned appellant beyond all reasonable doubts. Further, the motive has been established by the prosecution and the Lower Court has convicted the accused/appellant, after properly appreciating the evidences and materials on record.



to the family. However, P.W.10 has not deposed such details in his evidence. Further, P.W.1 has categorically admitted in her evidence that she has lodged Complaint as per Ex.P.1 to the police, on the date of occurrence, namely on 16.01.2012 itself and the police have come to the place of occurrence, immediately after the occurrence and arrested the accused and kept the accused in the custody of Maniyachi Police Station. In such circumstances, the evidence, given by P.W.16 Village Administrative Officer and Athatchi prepared by the police, namely, Ex.P.9, to the effect that the accused have been arrested and the confession statement has been recorded and the material objects have been recovered only on 18.01.2012, are highly doubtful. Further, P.W.1 has admitted in the Ex.P.1 Complaint that the occurrence has taken place nearer to the house of accused Murugan and however, she has deposed in her evidence that there is 100 feet distance between the accused Murugan's house and P.W.3 Subbaiya's house. Further, P.W.2 Dr. Joe Sheril has admitted that on 16.01.2012, he has served as Doctor in Ottapidaram Government Hospital and at 7.25 p.m., one Durairaj has brought, the said Madasamy, S/o. Annamariyan, aged about 35 years, to the hospital and the said Madasamy, alleged to have been assaulted by one known male person, at around 6.00 p.m., on 16.01.2012 at Colony, South Street, Kombadi, Thalavaipuram and he has examined the said Madasamy and he has declared that the said Madasamy has already expired and also, P.W.2 the Medical Officer attached to Ottapidaram Government Hospital has informed to the police about the occurrence. However, the said Durairaj, who brought the deceased Madasamy to the said hospital, has not been examined by the prosecution. For, not examining the said Durairaj, also, no acceptable reason, has been furnished by the prosecution. Further, P.W.2 Doctor has admitted that on 17.01.2012 itself, he has prepared Postmortem Certificate as per Ex.P.3. However, he has admitted that only on the next day, the police have shown to him, the M.O.1 Sickle. Further, P.W.2 Doctor has admitted that if in case, the strong object has fallen on the deceased or the deceased Madasamy has accidentally dashed on the strong stone or object, then the injuries, as pointed out by him, in the Ex.P.3 Postmortem Certificate, would have happened.

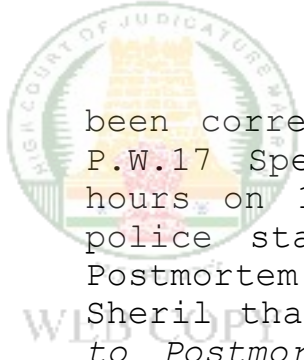
11. Further, P.W.6 Kamalanesan has deposed that P.W.1 Guildamary is his sister and the deceased Madasamy is the husband of the P.W.1 and on 16.01.2012, namely, the date of occurrence, he has taken the deceased Madasamy in Mini Door Auto, to the hospital. Further, he has admitted that he has put the body of the deceased, on his lap and due to that reason, his dresses have got the bloodstain and the police have seen his dresses, with the bloodstain. However, it is seen that the police have not produced the bloodstained dresses of P.W.6 and also, P.W.7, who has also admitted about the bloodstained dress. For not producing the said bloodstained dresses of P.W.6 and P.W.7 also, the prosecution has not furnished any sufficient and valid reasons. Further, P.W.7 Velankanni has deposed that P.W.1 is her sister and P.W.6 is her



brother and the deceased Madasamy is the husband of P.W.1 and also, she knows the accused and she has also admitted that her husband Durairaj has brought the deceased to the hospital and the said Durairaj has explained about the occurrence, to the Doctor. However, the said Durairaj has not been examined by the prosecution, to prove the said statement of P.W.7. Further, P.W.8 Maickel has admitted that the deceased Madasamy is his brother's son and he knows the accused and on the date of occurrence, he has put the body of the deceased Madasamy in Mini Door Auto and also, taken the deceased to Ottapidaram Government Hospital. At the same time, he has himself admitted that the police have not examined him, regarding the present case. Further, P.W.11 Jeyalakshmi has deposed that the deceased Madasamy is her son and P.W.1 is the wife of the deceased and she is residing with her husband, namely, P.W.10, in Moonar Kundala Estate, Kerala State and the accused is her brother and on 16.01.2012, the accused has caused harassments to P.W.1 and she came to know that, the said occurrence has happened, due to the said reason. At the same time, P.W.1 herself has clearly admitted in her evidence that there is no illegal relationship between the accused herein and the P.W.1, namely, the wife of the deceased.

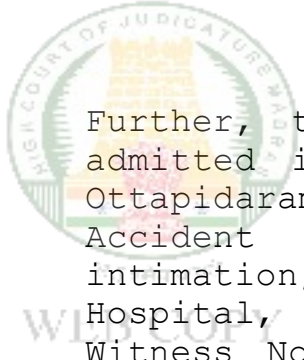
12. Further, P.W.12 Manikandan has deposed that he knows the deceased Madasamy and also, the accused and also, he knows P.W.1 and on 16.01.2012, he has gone to see the Sports Event, conducted at his village and at that time, there arose a dispute between the accused and the deceased Madasamy. Further, as far as, the motive is concerned, the prosecution has come with specific case, that the accused has got illicit intimacy with the deceased Madasamy's wife, namely, P.W.1 and hence, the deceased has questioned the accused, regarding the said illegal relationship with P.W.1 and for that reason, the accused has murdered the deceased. As regards, the said motive for the occurrence, P.W.1 has categorically denied that there is any illicit intimacy between the accused and P.W.1. Further, the other witnesses, examined with regard to the said motive by the prosecution, have also not deposed clearly and cogently, regarding, the same. Hence, the prosecution has not established the said motive for the alleged crime, committed by the appellant herein.

13. Further, in Ex.P.11 First Information Report, acknowledgement has been made by the learned Judicial Magistrate No.II, Kovilpatti. It is seen that there are corrections, with regard to the receipt of the said First Information Report by the said learned Judicial Magistrate at 3.00 a.m., along with original Complaint. In the original Complaint, namely, Ex.P.1, the time of the occurrence is not mentioned by the said learned Judicial Magistrate. Further in the said First Information Report, it is seen that the time of occurrence has



been corrected as 21.30 hours, instead of 22.00 hours. Further, P.W.17 Special Inspector of Police has admitted that at 23.00 hours on 16.01.2012 only, the message has been received by the police station, about the said occurrence. Further, in Ex.P.3 Postmortem Certificate, it has been pointed out by P.W.2 Dr. Joe Sheril that *the deceased appeared to have died 12-24 hours prior to Postmortem, due to shock of haemorrhage, due to fatal head injury.* However, the prosecution has miserably failed to prove the case that the accused only has caused brutal injuries to the deceased Madasamy, as pointed out by P.W.2 Doctor in his Ex.P.3 Postmortem Certificate, with the help of clinching and trustworthy evidences and material records. Further, in the present case, most of the witnesses, namely, P.W.Nos.3 to 5 and 13 have been treated as hostile witnesses and thus, they have weakened the case of the prosecution. Further, it is well settled law that conviction could be based on the sole testimony of the solitary evidence, but, the presence of that eyewitness at the place of occurrence has to be natural and her testimony has to be strong and also reliable and free from any blemish. However, on a careful perusal of Ex.P.1, as well as the evidence of P.W.1, it is seen that they are not clear, cogent and trustworthy, to accept the case of the prosecution.

14. Further, P.W.18 Dhanabalan has deposed that he has served as Inspector of Police and on 18.01.2012, he has arrested the accused at morning 7.00 a.m., in the backside of Kandhasampuram bus stand, before the presence of P.W.16 Japher Sadhick, Village Administrative Officer and Village Assistant with the help of P.W.17 and Police Maharajan and also, he has recorded the confession statement, given by the accused and Ex.P.8 is the admissible portion of the said confession statement and also, he has recovered M.O.1 Sickle, which, has been hidden by the accused in the old building, nearer to Melapandiyapuram Railway Station and also, he has recovered the dresses of the accused. However, P.W.1 herself has specifically admitted in her evidence that she has seen the accused on the date of occurrence and immediately, after the occurrence, Maniyachi police have come to the scene of occurrence and arrested the accused and also, taken the accused to Maniyachi Police Station on the date of occurrence, namely, on 16.01.2012 itself. Further, P.W.18 has admitted in his cross examination that there is correction in Ex.P.4 Observation Mahazar, with regard to the time, written in the said Mahazar and he has admitted that in Ex.P.12 Rough Sketch, Nos.3 to 15 have been written, incorrectly. Further, P.W.18 has admitted that in his Ex.P.13 Inquest Report, he has not stated about, the person, who has seen, lastly, before the occurrence and he has also admitted that in Ex.P.2, there is correction in the father's name of the deceased and also, he has further admitted that Durairaj only has examined the deceased in the hospital and the said Durairaj has given statement to the Doctor in the said hospital and the Accident Register has not been produced to the Court.



Further, the Defence Witness No.1 Thiru.Rajshankar has clearly admitted in his evidence that he has served as Pharmacist in Ottapidaram Government Hospital and he has submitted Ex.D.1 Accident Register, dated 16.01.2012, regarding the police intimation, sent for the deceased, brought dead to the Government Hospital, at Ottapidaram, by Durairaj. Furthermore, Defence Witness No.2, Ms.Barsath Begam, the learned Judicial Magistrate has admitted in her evidence, regarding the receipt of the Ex.P.11 First Information Report and also, she has clearly admitted that if there are corrections made in the said First Information Report, regarding the date and time of the receipt of the said First Information Report, then, there has to be initials, made for the said corrections. However, no initials have been made in the said First Information Report, namely, Ex.P.11, though there are corrections made, with regard to the time of receipt of the said First Information Report as 3 a.m. In the light of evidence of P.W.1 and also, the above mentioned evidences of other witnesses, the manner in which, the First Information Report, namely, Ex.P.11 has been prepared by the police, shows considerable doubt.

15. Further, it is useful to refer the following Judgments for the proper appreciation of the above mentioned facts and circumstances of the present case:-

i) In the case reported in **1995 SCC (Cri) 151, (State of Haryana v. Inderaj)** and another, it is precisely held as follows:-

"Prosecution case based on evidence of highly interested witnesses and their presence at the scene of occurrence doubtful and also witnesses making certain improvements regarding nature of weapon used. Held. In the circumstances, it is highly unsafe to convict the accused in appeal against acquittal."

In the present case also, on a careful scrutiny of the entire materials on record, it is found that the prosecution has not established the guilt of the appellant herein, beyond all reasonable doubts. Further, the contradictions as pointed out on behalf of the appellant are material and can be held to go to the root of the case.

ii) Further, in the case reported in **2006(2) MWN (Cr.) 10 (DB), (Srikanth & others V. The State, rep. By Inspector of Police, K-10, Koyambedu Police Station)**, it is clinchingly observed as follows:-

"Recovery effected pursuant to confession allegedly given by accused in police custody, cannot be given much importance."

iii) Furthermore, in the case reported in (1994) 1



Supreme Court Cases 726, (**Bhalinder Singh Alias Raju V. State of Punjab**), it is specifically held as follows:-

"Held, on fact, circumstances not sufficient to conclusively establish the guilt of the accused."

iv) Also, in the case reported in **AIR 2007 Supreme Court 2002, (State of Rajasthan V. Wakteng)**, it is detailedly observed as follows:-

"Above being the position, the High Court has rightly held that the prosecution has failed to establish the accusations against the respondent."

v) Further, in the case reported in (2010) 13 SCC 657, (**Dr. Sunil Kumar Sambhudayal Gupta and others V. State of Maharashtra**), it is held as follows:-

"Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witnesses also make material improvements before the Court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence."

On a careful scrutiny of the entire materials on record of the present case, it is found that the above judgments are applicable to the facts and circumstances of the present case.

16. Further, it is found that there are material deficiency in the evidence of P.W.1. Further, the evidence of eyewitness of P.W.1 is not credible and the circumstances are inconsistent with the offence alleged to be committed by the appellant and the evidences of prosecution, on material objects, are very doubtful. Further, on a cumulative consideration of the above mentioned entire evidence of prosecution and also material objects, it is found that the prosecution has not established the case by producing the reliable, trustworthy and credible witnesses, in the present case.

17. Moreover, it is found that the prosecution has not produced cogent, natural and trustworthy evidences and material objects to establish the alleged crime committed by the appellant. Further, the prosecution has not established the case beyond all reasonable doubts by adducing acceptable evidences. The aspects, which have to be taken care of, are the nature of circumstances, time when confession is made and credibility of witnesses, who speak of such confession and these aspects have not been established, in accordance with law, by the prosecution.

18. In view of the above discussion, this Court has no hesitation to hold that the prosecution has not established the



guilt of the appellant beyond reasonable doubts and the above mentioned circumstances also create serious doubt in the case of the prosecution. The doubts have not been clearly explained by the prosecution in any manner and thus, the appellant is entitled to get the benefit of such doubts. For the above mentioned reasons, facts and circumstances and situations, it is found that the Lower Court has not passed the impugned Judgment, after properly appreciating the materials on record, in proper perspective and the present appeal has to be allowed for the reasons and grounds stated in the Memorandum of Appeal and also for the submissions made on behalf of the appellant and thus, the points are answered in favour of the appellant herein.

19. **In the result**, this Criminal Appeal is allowed and the conviction and sentence imposed by the learned II Additional Sessions Judge, Tuticorin District, by Judgment delivered in S.C.No.269 of 2012 dated 01.07.2013 are set aside and the appellant / accused / Murugan in Crime No.3 of 2012 is acquitted. The bail bond, if any, executed by him shall stand cancelled and fine amount, if any, paid by him shall be repaid to him.

Sd/-

Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I, Kovilpatti.
2. The Cheif Judicial Magistrate, Tuticorin.
3. The II Additional Sessions Judge, Tuticorin District.
4. The Principal District Judge, Tuticorin.
5. The District Collector, Tuticorin.
6. The Director General of Police, Mylapore, Chennai-4.
7. The Inspector of Police, Maniyachi Police Station, Tuticorin District.
8. The Superintendent, Central Prison, Palayamkottai.
9. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

+one cc to M/s.K.Prabhu, Advocate in SR.No.20402

Cr1.A. (MD) No.235 of 2013

11.04.2016

pmu

CSL/SDR-SH/ 09.05.2016 : 15p/11c