

**Bail Slip**

The Appellant/Accused 2 namely A. Pankeraaj was released on bail by this Hon'ble Court made in MP(MD)No. 1 of 2013 in Cr1.A(MD)No. 304 of 2013, dated: 24.10.2013.

WEB COPY

The Appellant/Accused No.1 namely M.Antony Selvam was released on bail by this Hon'ble Court made in MP(MD)No.2 of 2013 in Cr1 A(MD)No. 304 of 2013, dated: 20.12.2013.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR
AND

THE HONOURABLE MR.JUSTICE V.S.RAVI

Cr1.A(MD)No.304 of 2013

1.M.Antony Selvam
2.A.Pankeraaj

..Appellants/Accused Nos. 1 and 2

Vs.

State Represented by
The Deputy Superintendent of Police
Kannhyakumari Sub-Division
Erraniyal Police Station
Kannyakumari District
(Cr.No.346 of 2008)

.. Respondent/Complainant.

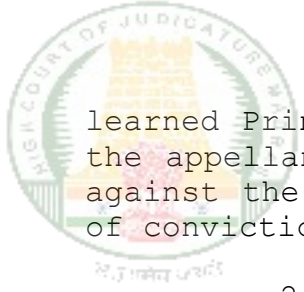
PRAYER: Criminal Appeal filed under Section 374(2) Cr.P.C challenging the judgment of the learned Principal Sessions Judge, Kanyakumari District at Nagercoil dated 24.09.2013 in S.C.No.103 of 2011 .

For Appellants :Mr.V.Kathivelu Senior Counsel
for Mr.K.Prabhu.

For Respondent :K.S.Durai Pandian
Additional Public Prosecutor
Judgment reserved on : 22.01.2016
Judgment pronounced on : 26.04.2016

JUDGMENTP.R.SHIVAKUMAR, J.

<https://hcservices.ecourts.gov.in/hcservices/> Antony Selvam, S/o.Maria Sebastiyam and Pankeraaj, S/o.Antony, who figured as Accused 1 and 2 in S.C.No.103 of 2011 (Crime No.346 of 2008 registered on the file of Eraniyal Police Station) on the file of the



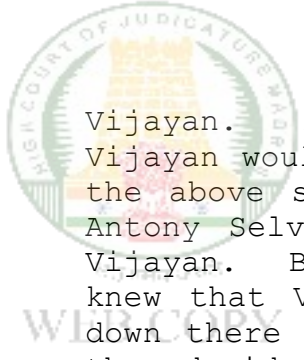
learned Principal Sessions Judge, Kanniyakumari District at Nagercoil, are the appellants in the criminal appeal and they have preferred the appeal against the judgment of the trial Court dated 24.09.2013 both in respect of conviction and sentence.

2. Antony Selvam, the first appellant/first accused was prosecuted for offences punishable under Sections 120-B, 341, 294(b) and 302 IPC. Pankeraaj, the second appellant/second accused was prosecuted for offences punishable under Sections 120-B, 341, 294(b) r/w.149 and 302 IPC. At the conclusion of trial, the learned trial Judge, by a judgment dated 24.09.2013, acquitted Antony Selvam, the first appellant/first accused in respect of the offences punishable under Sections 120-B and 341 IPC, and acquitted Pankeraaj, the second appellant/second accused in respect of the offences under Sections 120-B and 294(b) r/w.149 IPC. The learned trial Judge convicted Antony Selvam, the first appellant/first accused for the offence under Section 294(b) IPC with a sentence of fine of Rs.1000/- and a default sentence of simple imprisonment for three months in the event of default in payment of fine and for the offence under Section 302 IPC with life imprisonment and a fine of Rs.1000/- with a default sentence of simple imprisonment for a period of 6 months. The learned Sessions Judge convicted Pankeraaj, the second appellant/second accused for the offence under Section 341 IPC imposing a sentence of fine of Rs.500/- and a default sentence of simple imprisonment for a period of one month in the event of default in payment of fine and for the offence under Section 302 IPC imposing a sentence of life imprisonment and a fine of Rs.1000/- with a default sentence of simple imprisonment for a period of six months. Challenging the said judgment of the trial Court 24.09.2013, both in respect of conviction and in respect of sentence, the accused have preferred the present appeal on various grounds set out in the appeal petition.

3. For the sake of convenience, the appellants are referred to as accused Nos.1 and 2 and the respondent is referred to as prosecution. At appropriate places, their ranks in the appeal will also appear in case necessity arises.

4. The case of the prosecution, as discerned from the oral and documentary evidence, can be briefly stated as follows:

i) The deceased vijayan and the first accused Antony Selvam were neighbours residing in adjacent houses in Konnakkulivilai within the territorial jurisdiction of Eraniyal Police Station. Deceased Vijayan was employed in Southern Railways as Gate Keeper and he was posted at Nagercoil, whereas the first accused was doing business having a small Crusher unit at quarry sites in the nearby hillocks. The second accused Pankeraaj was engaged by the first accused as helper in his business. PW1-Vimala Glori Bai, the wife of deceased Vijayan was employed as Manager in Annai Finance, Konnakkulivilai. The first accused Antony Selvam grew jealous since his neighbour Vijayan was employed in Railways. Hence, the first accused Antony Selvam used to abuse the deceased Vijayan with vulgar words very often in the presence of others. Since the first accused had adopted the practice of abusing Vijayan with vulgar words in the presence of others and general public thereby insulting him in public view, Vijayan did not extend invitation to the first accused for the puberty function of his daughter, which was held on 26.04.2008. The same provided a motive for the first accused to kill



Vijayan. He also used to adumbrate in the presence of Public that Vijayan would not be allowed to live, as he had omitted to invite him to the above said function. In the said circumstances, the first accused Antony Selvam sought the help of Pankeraaj, the second accused to kill Vijayan. Both of them hatched out a conspiracy to kill Vijayan. They knew that Vijayan used to come by bus from Nagercoil to Paraseri, get down there and go to his residence at Konnakkulivilai by walk. Hence, they decided to intercept him in between Paraseri and Konnakkulivilai and accomplish the object of conspiracy, namely the causing death of Vijayan.

ii) At about 22.00 hours on 03.05.2008, the first and second accused were waiting at a place near Kalvarambu Anbumukku expecting the arrival of Vijayan to accomplish their evil design and at that point of time, the first accused was armed with an iron rod and the second accused was armed with a stick. When they saw Vijayan getting down from the bus at Paraseri junction and proceeding towards Konnakkulivilai, the second accused Pankeraaj stopped him calling his name and both the accused caused obstruction to deceased Vijayan from proceeding in the direction he was going. Besides intercepting him, the first accused Antony Selvam attacked Vijayan on the base of his nose, left side cheek and jaws using an iron rod. Following the first accused, the second accused Pankeraaj attacked the deceased Vijayan on his forehead with the stick and pushed him to the ground thereby causing injuries on the left side cheek and to the teeth on both jaws. The first accused Antony Selvam continued the attack by kicking Vijayan with his foot after he fell down due to the push made by the second accused, causing injuries on the left side ribs, right side chest and right side abdomen. Not stopped with that, the first accused Antony Selvam, again using the iron rod, attacked Vijayan indiscriminately on the chest and abdomen causing injuries to the liver, kidney, renal bladder and small intestine and also causing fracture of 5 ribs on the right side and internal bleedings.

iii) PW1-Vimala Glori Bai, who was proceeding from Konnakkulivilai to Paraseri, to buy tiffin for her aged mother-in-law, saw the occurrence and ran towards the scene of occurrence raising alarm. Hearing the alarm made by her, one Paulraj, PW2-Rajkumar and one Francis @ Mani rushed to the scene of occurrence. On seeing them, the accused 1 and 2 ran away from the scene of occurrence taking along with them the respective weapons (iron rod and stick) they had with them. The above said Francis @ Mani arranged an auto-rickshaw in which he and PW1 took Vijayan to a private hospital by name Prakash Hospital at Villukuri. Since there was no doctor available at that point of time, Vijayan was taken to Thilagaram Hospital, Nagercoil run by PW12 Dr.Balaji. Along with PW1 and Francis @ Mani, one Abinesh also went to the hospital. PW3-Ammal was also an eye witness to the above said occurrence. PW12-Dr.Balaji, admitted Vijayan at 23.35 hours on 03.05.2008 in Thilagaram Hospital as an inpatient, took MO4 x-rays and CT Scan, details of which were marked as MO3. He has also prepared Ex.P8-Accident Register. At the time of admitting Vijayan as an inpatient, Vijayan informed PW12 Dr.Balaji that he was assaulted by the first accused Antony Selvam using a stick. PW12 also sent an intimation to the police. PW15 Mani, Head Constable, who was in-charge of Eraniyal Police Station on 04.05.2008, received intimation over phone regarding the admission of Vijayan in Thilagaram Hospital, proceeded towards the said hospital, recorded the statement of PW1 W/o Vijayan since Vijayan was not in a position to speak at that point of time, came back to the Police Station at 22.30 hours, prepared Ex.P16 FIR in the printed form and registered a case in Crime No.346 of 2008 on

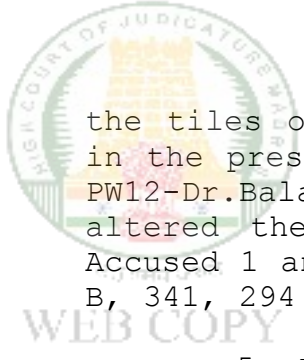
the file of Eraniyal Police Station for offences under Section 204(b), 341 and 323 IPC.

iv) PW16-Rajaram, the then Sub-Inspector of Police, Eraniyal Police Station got the copy of the FIR and took up the case for investigation. He proceeded towards the place of occurrence at the early morning on 05.05.2008 and at about 07.00 hours, he prepared Ex.P2-Observation Mahazar and Ex.P17-Rough Sketch showing the topography of the place of occurrence in the presence of witnesses Sahaya Pauldev (PW5) and Charles. Subsequently, on 07.05.2008 at 15.30 hours, Vijayan succumbed to the injuries and died while he was taking treatment as inpatient in Thilagaram Hospital. The intimation regarding the death of Vijayan was sent to the Police Station under Ex.P9.

v) PW17-Muthukrishnan, the then Inspector of Police, Eraniyal Police Station received the death intimation at 15.50 hours on 07.05.2008, sent an alteration report under Ex.P18 altering the case into one for offences under Sections 341, 294(b), 323 and 302 IPC and took up the further investigation of the case from PW16-Rajaram. He conducted inquest on deceased Vijayan between 16.45 hours and 18.45 hours on 07.05.2008 and prepared P19-Inquest Report. Thereafter, he sent the dead body along with Ex.P12-requisition letter to the Government Hospital, Assaripellam for autopsy through PW10-Mohan, Head Constable. PW13-Dr.Rajesh conducted autopsy on 08.05.2008 between 11.00 hours and 12.00 hours and issued the Post-mortem report under Ex.P13. The final report issued by PW13 is Ex.P14. In the post-mortem report, he opined that the deceased appeared to have died due to the injury caused to the small intestine, which resulted in fecal peritonitis as a consequence of the said injury.

vi) As the case was registered against the first accused alone and the first accused had surrendered before the Judicial Magistrate, Valliyur, PW17- Inspector of Police, took him into the police custody at 17.00 hours on 15.05.2008, examined him in the presence of the Village Administrative Officer and Village Assistant of Villukuri. Based on the information furnished by the first accused in his confession statement admissible portion of which is Ex.P3, he recovered MO2 stick from the coconut thope of one Micheal of Konnakkulivilai under Ex.P4-Mahazar in the presence of PW7-K.Mani, the then Village Adminsitrative officer and his Assistant. After completing investigation, PW17 submitted a final report against the first accused alone for alleged offences under Section 294(b), 341, 323 and 302 IPC on 24.06.2008.

vii) PW1 moved the Madurai Bench of Madras High Court by filing Crl.R.C (MD) No.442 of 2010, based on which a reinvestigation by the Deputy Superintendent of Police, Kanyakumari was ordered by the High Court. Pursuant to the said order, PW18, the then Deputy Superintendent of Police, Kanyakumari Sub-Division took up the further investigation, examined the witnesses, verified the Observation Mahazar and Rough sketch after paying a personal visit to the place of occurrence and found them to be correct. He also examined and recorded the statements of Dr.Prakash of Prakash Hospital, Villukuri, Abinesh, who is projected as an eyewitness, PW6-Arjun, the auto driver and submitted an alteration report under Ex.P20 on 22.08.2011 altering the case into one for offences under Sections 341, 294(b), 324, 323 and 302 IPC. On 23.08.2011 he arrested the second accused Pankeraj at 06.00 hours at Vadaseri Junction in the presence of the witnesses Vargheese and Gnanaprakasam (PW8). Based on the confession statement of the second accused, admissible portion of which is Ex.P5, he recovered MO1-Iron Rod from the gap between



the tiles on the roof of the second accused's house under Ex.P6 mahazar in the presence of PW8-Gnanaprakasam and one Vargheese. He also examined PW12-Dr.Balaji and also PW13-Dr.Rajesh, completed the investigation, altered the penal sections and submitted a final report accusing the Accused 1 and 2 of committing the offences punishable under Sections 120-B, 341, 294(b), 325, 326, 302 and 201 r/w.34 IPC.

5. In order to prove its case, the prosecution examined Pws 1 to 18, marked Exs.P1 to P21 and produced Mos 1 to 4. Out of the 18 witnesses examined on the side of the prosecution, Pws 1 to 3 were examined as eyewitnesses.

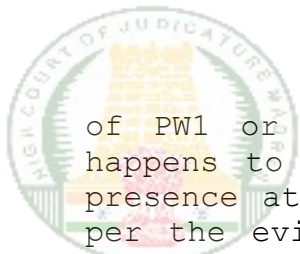
6. At the conclusion of trial, the incriminating materials found in the evidence thus adduced on the side of the prosecution were culled out and the accused were questioned under Section 313(1)(b) Cr.P.C regarding those incriminating materials. They pleaded not guilty and reiterated their contention that they were innocent and that they were falsely implicated. No witness was examined and no document was produced on the side of the accused.

7. The learned trial Judge, after hearing the arguments advanced on both sides, considered the evidence in the light of the points urged in the arguments and upon such consideration, held Charge No.1 for offence under Section 120-B framed against Accused Nos.1 and 2, Charge No.2 framed against the first accused for offence under Section 341 IPC and Charge No.4 framed against the second accused for the offences under Sections 294(b) r/w 149 IPC were not proved and acquitted the respective accused in respect of those charges. However, the learned trial Judge found the first accused guilty of the offence under Section 294(b) as per Charge No.3, the second accused guilty of an offence under Section 341 IPC as per charge No.2 and both the accused 1 and 2 guilty of an offence under Section 302 IPC as per charge No.5, convicted them for the said offences and imposed punishments, as indicated supra. As against the said judgment in respect of conviction as well as sentence, the accused have preferred the present criminal appeal on various grounds set out in the appeal petition.

8. This Court heard the arguments advanced by Mr.V.Kathirvelu, learned senior counsel appearing for Mr.K.Prabhu, counsel on record for the appellants and by Mr.K.S.Durai Pandian, the learned Additional Public Prosecutor appearing for the respondent.

9. Mr.V.Kathirvelu, learned senior counsel for the appellants advanced the following arguments:

i) The judgment of the trial court convicting the accused 1 and 2 is against law, weight of evidence and preponderance of probabilities. The case of the prosecution proceeds on the footing that there was previous enmity between deceased Vijayan and the first accused Antony Selvam. But a consideration of the evidence adduced through the prosecution witnesses will make it obvious that the prosecution miserably failed to prove even the motive alleged by the prosecution, since there is lack of coherence and on the other hand, there are lot of contradictions and improbabilities in the evidence of the prosecution regarding the motive. Though three witnesses were examined as PWs.1 to 3 as eye witnesses to the occurrence, PW2 has not referred to the presence



of PW1 or PW3 and PW3 has not referred to the presence of PW2. PW3 happens to be a relative of PW1 and she is only a chance witness. Her presence at the scene of occurrence at odd hours is highly doubtful. As per the evidence of PW12-Dr.Balaji, who treated the deceased as an in-patient at Thilagaram hospital, he was informed by the deceased himself that the occurrence took place at 8.30 p.m (20.30 hours) on 03.05.2008. In the complaint and the first information report marked as Ex.P1 and P16 also, the time of occurrence has been noted as 08.30 p.m (22.30 hours). A comparison of the first information report with Ex.P8-intimation regarding the admission of the deceased in Tilagaram Hospital will highlight the discrepancy in the evidence of the prosecution regarding the time of occurrence. Though the occurrence is said to have taken place at 20.30 hours, as per the recitals found in Ex.P8, as per the evidence of the eyewitnesses, it is claimed to have taken place at 10.00 p.m (22.00 hours) on 03.05.2008. Ex.P1-complaint statement of PW1 came to be obtained and the first information came to be registered much later, namely on 04.05.2008 (next day) only at 22.30 hours. There is no explanation for such a delay. Even after the registration of the case, the complaint and the first information report were sent to the court with a further delay for which there is no explanation. The time gap could have been used for concoction after deliberation, as a result of which, there is also a possibility of suppression of original complaint and substitution of the same with Ex.P1. The prosecution has not brought-forth the true genesis of the occurrence. There are contradictions as to whether deceased Vijayan was given any kind of treatment at Prakash Hospital before being taken to Thilagaram Hospital, Nagercoil. Tailor Francis and one Abinesh, projected as eye witnesses by PW1, were not examined as witnesses on the side of the prosecution in the trial court. Their non-examination will affect the case of the prosecution to a greater extent. PW2 is an interested witness, since one Joseph son of the second accused was admittedly involved in the murder of PW2's first cousin. There are also vital contradictions regarding the weapons used by the accused persons during the occurrence in this case. In the first charge-sheet filed by the Inspector of Police, who figured as PW17, the first accused Antony Selvam was arraigned as the sole accused and the second accused Pankeraj figured as a witness for the prosecution. But in the second charge-sheet submitted after further investigation by the Deputy Superintendent of Police, who was examined as PW18, both first and second accused have been arraigned as accused. The first accused is said to have used an iron rod and the second accused is said to have used a stick to attack the deceased Vijayan in the occurrence. Iron rod is said to have been recovered on the basis of the confession statement of the second accused, whereas the stick is said to have been recovered on the basis of the confession statement of the first accused.

ii) In the Accident Register prepared by PW12-Dr.Balaji, the following injuries were said to have been noted at the time of admission.

- a) blunt injury on the abdomen;
- b) fracture of the right side 6th to 9th ribs;
- c) abrasion on the lower lip.

Only in Ex.P9, the death intimation sent to the Inspector of Police, the following internal injuries were also noted in addition to the three injuries noted in the Accident Register. They are :

"Perforation of jajunum, injury to right kidney and supra renal gland, abrasion on the lower lip, nose, right forehead and around right eye."



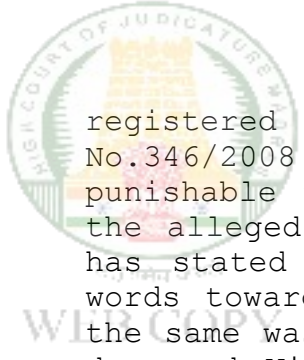
In the post-mortem examination certificate marked as Ex.P13, totally 10 injuries were noted, which are as follows:

- 1) 5 x 2 cm abrasion seen over the right side of the forehead
- 2) 3 x 1/2 cm abrasion seen over the right of the root of nose
- 3) 1/2 x 1/2cm abrasion seen over the left side of face
- 4) Left medial upper incisor and left upper canine found uprooted
The sockets were filled blood clots.
- 5) 1 x 1/2 cm abrasion seen over the centre of lower jaw
- 6) 4 cm long linear scratch abrasion seen over the center of lower chest
- 7) 1 x 1 cm abrasion seen over the left side of lower back
- 8) 1 x 1/2 cm x liver deep incised punctured wound seen over the right side of outer aspect of lower chest.
- 9) 2 x 1/2 cm peritoneal cavity deep incised punctured wound seen over the right side of outer aspect of lower abdomen
- 10) 2 x 1/2 cm x peritoneal cavity deep incised punctured wound seen over the left side of lower abdomen.

Out of the above ten injuries, injury Nos.8, 9 and 10 were found to be clinical (surgical) injuries. The three punctured surgical injuries could have caused the puncture of the small intestine. The hole made in the small intestine was not sutured and the same led to fecal peritonitis resulting in the death. There is also no external injury corresponding to deep incised/punctured wound found in the liver. The same could have been caused due to negligence of the doctor, who treated the deceased. Had the trial court adverted to all the above said aspects in proper perspective, it would have arrived at a conclusion that the prosecution story was not proved beyond reasonable doubt and acquitted the accused 1 and 2. This court being the first appellate court, should re-appraise the evidence and on such re-appreciation hold that the prosecution case in respect of all the charges has not been proved by trustworthy and reliable evidence beyond reasonable doubt, set aside the conviction and acquit the accused 1 and 2 of all the offences for which they were prosecuted before the trial court.

10. Per contra, it is the contention of the learned Additional Public Prosecutor that the prosecution case regarding motive alleged by the prosecution, actual occurrence and the cause of death has been proved beyond reasonable doubt by examining three eye witnesses, by the medical evidence and by the recovery of the weapons used by the accused persons for the occurrence. It is his further contention that minor deviations and insignificant differences in the evidence of the prosecution witnesses are sought to be projected as material contradictions by blowing them out of proportion by the appellants in support of their challenge made to their conviction and that the well considered judgment of the trial court should not be interfered with and the appeal should be dismissed.

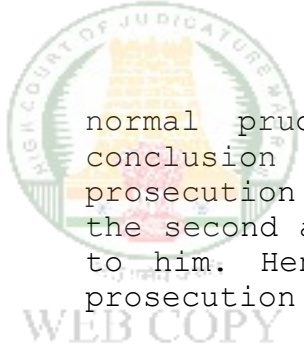
11. The prosecution has alleged motive for the first accused Antony Selvam to cause the death of PW1's husband, namely deceased Vijayan. The complaint statement of PW1-Vimala Glory Bai recorded by PW15-Mani (Head constable) has been marked as Ex.P1. It was he who prepared Ex.P16-First Information Report, based on Ex.P1-statement and



registered a case against the first accused Antony Selvam in Crime No.346/2008 on the file of Eraniyal Police Station for offences punishable under Sections 294(b), 341 and 323. PW1, while referring to the alleged previous enmity in her complaint statement marked as Ex.P1, has stated that the first accused Antony Selvam used to utter vulgar words towards her; that her husband protested against the same and that the same was the reason for the enmity between the first accused and the deceased Vijayan. In Ex.P1, it has been further stated that the first accused was scolding them using vulgar words, as they did not invite the first accused for the puberty function of their daughter.

12. It is not the case of the prosecution that the first accused and PW1 are relatives. It is also not their case that their relationship as neighbours was cordial. On the other hand, PW1 herself admits that there existed no cordial relationship between them. As such, it is highly improbable that the first accused could have developed ill-will against the husband of PW1 for not inviting him for the function arranged pursuant to the attainment of the puberty by the daughter of PW1. The statement found in Ex.P1 does not refer to any function arranged by PW1 and her husband Vijayan. On the other hand, the averment found therein is to the effect that the first accused was aggrieved by the non-disclosure of the fact of PW1's daughter attaining puberty. However an improvement came to be made during investigation as if a puberty function was arranged to be held on 26.03.2008 and the first accused was not invited for the said function to project the same as the motive for the first accused having a grudge against deceased Vijayan. When asked about whether any invitation was printed and distributed, PW1 conveniently answered that no invitation was printed for the puberty function of her daughter. Not even a scrap of paper, like bills evidencing purchase of things for the puberty function or note book used for recording the receipt of seer and gifts came to be produced.

13. No doubt it is true that PWs.2 and 3 have stated in their evidence in chief examination that the first accused Antony Selvam attacked the deceased Vijayan asking him why he did not invite him to the puberty function of the daughter of Vijayan. But they did not state the date of function and how many days prior to the occurrence the puberty function was conducted. In addition, PW1 has referred to some other incident also as providing the basis for the motive developed by the first accused. It is her evidence that the first accused used to peep into their house, which led them to close the door way of their house facing the house of the first accused and open a new door away on the other side. It is her further testimony that the first accused was letting out the drainage water from his house to pass through the front yard of PW1's house and that since PW1's husband raised protest against the same, the first accused Antony Selvam developed enmity against PW1's husband. These are all new additions and embellishments made after the registration of the case. Moreover in the charge-sheet filed after further investigation by PW18-Deputy Superintendent of Police, it has been stated that the first accused grew jealous because PW1's husband Vijayan was employed as a Government servant in the Railways. None of the witnesses examined on the side of the prosecution has spoken about such jealousy. In addition, the reason assigned by the prosecution witnesses to attribute motive for the accused to murder Vijayan seem to be slender and frivolous to constitute a motive to commit murder by a person of



normal prudence. Hence this court has to necessarily arrive at a conclusion that the motive attributed to the first accused by the prosecution has not been substantiated by reliable evidence. So far as the second accused is concerned, there is no evidence to attribute motive to him. Hence this court, hereby, holds that the motive part of the prosecution case stands unsubstantiated by reliable evidence.

14. We have seen supra that the motive alleged by the prosecution has not been proved. But the mere fact that the motive alleged by the prosecution has not been proved will not necessarily lead to the conclusion that the case of the prosecution regarding the occurrence shall be false. Similarly the proof of motive shall not lead to the conclusion that the charge against the accused shall be true. Motive is one among the several factors to prove the guilt of the accused. The failure to prove motive alone shall not be the ground for acquittal. The court has to consider the evidence regarding the occurrence to arrive at a conclusion.

15. So far as the occurrence is concerned, PWs.1 to 3 were examined as eye witnesses. PW1 is none other than the wife of the deceased. She is an interested witness and her evidence requires to be approached with care and caution. She is also a cliver witness capable of changing her statement very often. She gave three different versions: one to the Head Constable under Ex.P1-statement and to PW16-Rajaram, the Sub-Inspector of Police, who conducted the initial investigation, the second one to PW17-Muthukrishnan the Inspector of Police, who conducted further investigation after the alteration of the case into a murder case, who submitted the first final report and the third one to PW18-Deputy Superintendent of Police, who conducted further investigation of the case as per the direction of the High Court and submitted the second final report. Apart from the same, she has made attempts to make a lot of improvements during the course of her evidence as PW1. In fact, nothing was mentioned by her in the complaint statement marked as Ex.P1 regarding the involvement of the second accused Pankeraaj in the occurrence. Based on the investigation conducted by PW17-Muthukrishnan, the then Inspector of Police, a final report was submitted alleging commission of offences punishable under sections 294(b), 341, 323 and 302 IPC by the first accused Antony Selvam alone. The said final report was taken on file by the committal magistrate and the case was committed to the Sessions Court for trial. The same was taken on file by the learned Sessions Judge as S.C.No.100/2008. Thereafter, PW1-Vimala Glory Bai filed a petition before the High Court in CrI.O.P.No.9247/2008 seeking a direction for re-investigation of the case. The said criminal original petition was disposed of by High Court granting liberty to PW1 to move the trial court (Sessions Court) under Section 173(8) Cr.P.C for further investigation.

16. Pursuant to the said order, PW1 filed such a petition before the trial court. The same was kept as un-numbered petition in C.E. No.4986/2010 and was dismissed by the Sessions Court by order dated 10.03.2010. Aggrieved by and challenging the same, PW1 filed a revision before the High Court in CrI.R.C.(MD) No.442/2010. A learned single Judge of the High Court sitting in the Madurai Bench of Madras High Court, by order dated 03.02.2011 allowed the revision and issued the following directions:-

- (i) The Sessions Court shall return the records



committed to it in S.C.No.100 of 2008 to the Judicial Magistrate, Eraniel.

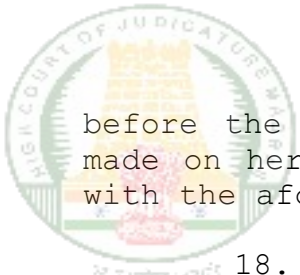
(ii) A further investigation in the matter shall be conducted by the Deputy Superintendent of Police, Kanyakumari, under the direct supervision of the Superintendent of Police concerned. The further investigation shall be completed within a period of three months from the date of receipt of a copy of this order and the report under Section 173(8) of Cr.P.C. shall be submitted within such period to the Judicial Magistrate, Eraniel.

(iii) The Judicial Magistrate, Eraniel, shall cause fresh committal after taking into consideration the additional report received by it under Section 173 (8) of Cr.P.C.

(iv) The Superintendent of Police of Kanyakumari District is directed to cause a detailed enquiry and get to the root of the matter regards failure of his departmental subordinates in the conduct of registration and investigation in the case and take/recommend appropriate departmental action. A copy of such report shall be filed in this Court not later than four months from the date of receipt of a copy of this order.

(v) A copy of this order shall be placed before the Registrar (Judicial) of this Bench for appropriate follow up.

17. A perusal of the contents of the affidavit of PW1 filed in the Sessions Court in the petition seeking reinvestigation, which has been reproduced in the order of this court dated 03.02.2011 referred above, makes it obvious that PW1 in the said affidavit projected the second accused Pankeraaj as an abettor present in the scene of occurrence and that she has not attributed any direct overt act on the part of the second accused. She had simply stated that the second accused Pankeraaj supported the first accused Antony Selvam in his criminal act of attacking the deceased Vijayan with an iron rod with an intention of killing him. She also failed to state anything about the weapon, if any, with which the second accused was armed. However, during the course of further investigation pursuant to the direction issued by this court and in her evidence before the trial court as PW1, she made an improvement by attributing overt acts to the second accused Pankeraaj as if he attacked the deceased on the forehead with a stick and pushed him down to the ground causing injuries to the right cheek and the teeth in both upper and lower jaws. It shall be pertinent to note that there is no averment in the second final report submitted by PW18 that the second accused Pankeraaj kicked the deceased. There is also nothing in it to show that the first accused got the stick from the second accused and attacked the deceased with the stick on the chest and right side ribs. In the final report, it has been stated that the second accused Pankeraaj attacked the deceased Vijayan on his right side forehead with a stick and then pushed him to the ground causing injuries on the left cheek and the teeth in both lower and upper jaws. It has been further stated therein that after the deceased Vijayan fell down, it was the first accused Antony Selvam, who kicked him with his foot on the left side ribs, right side chest, right side abdomen, then attacked him again with the iron rod on the chest, abdomen and thereby caused fracture of ribs, injuries to internal organs like liver, kidney, renal bladder, lungs and small intestine causing internal bleeding. During the course of evidence adduced by PW1



before the trial court, she gave testimony regarding details of attack made on her husband Vijayan, which is quite contrary to and conflicting with the aforesaid averments in the final report.

18. PW1 in her chief examination describes the incident as follows:

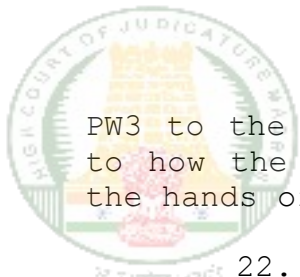
When her husband was proceeding towards their residence, the second accused Pankeraj armed with stick obstructed him at Kalvarambu Mukku. The first accused Antony Selvam, who was having an iron rod, abused the deceased with vulgar words and attacked him on the right side cheek and nose using the iron rod. Thereafter the second accused Pankeraj pushed the deceased to the ground in which the deceased Vijayan sustained injuries on the forehead, cheek and nose, then the first accused Antony Selvam got the stick from the second accused Pankeraj and attacked the deceased Vijayan on his right side chest and ribs with the stick. Thereafter he kicked him on the abdomen (அடிவயிற்றில் நன்றாக சவட்டிவிட்டார்).

19. The said testimony of PW1 shows that it is quite contrary to what has been stated in the first final report and contrary to even the second final report. In the second final report/charge-sheet filed by PW18, it has been stated that the second accused Pankeraj attacked the deceased Vijayan on the right side forehead and right side cheek with the stick and then pushed him to the ground. PW1 does not say that the second accused Pankeraj attacked Vijayan with the stick before he pushed down Vijayan to the ground.

20. The evidence of PW2 is quite contrary to the evidence of PW1. Though in chief examination he deposed in line with the testimony of PW1 regarding the respective weapons held by the first and second accused, during cross examination there was a clear deviation and he gave a different version giving a go by to what he had stated in the chief examination. In his evidence in the cross examination, he asserted that it was not correct to state that at the time of occurrence, the first accused Antony selvam was having an iron rod and that on the other hand, the first accused was having a stick. The relevant portion in vernacular is extracted here under:

“சம்பவ நடைபெற்ற காலக்கட்டத்தில் அந்தோனி செல்வத்திடம் இரும்பு கம்பி இருந்ததாக சொல்வது தவறு. கம்பு இருந்ததாக சொன்னேன்”.

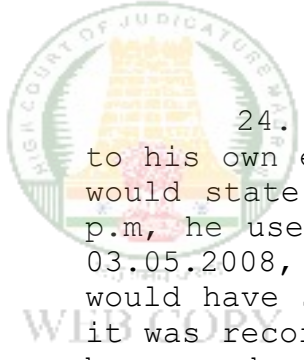
21. PW3-Ammal is a close relative of PW1. In her evidence in chief examination she said that the deceased Vijayan was obstructed and stopped by the second accused Pankeraj; that at that point of time, the first accused Antony Selvam holding a stick in his hands, abused Vijayan with vulgar words for not inviting him to the puberty function of his daughter. She further stated that the first accused at the first instance attacked Vijayan with iron rod and then after dropping the iron rod, he got the stick from the second accused and attacked Vijayan. The said statement of PW3 is self-contradictory. She did not state that either the first accused or the second accused was having an iron rod when second accused Pankeraj stopped the deceased Vijayan. On the other hand, it was her statement that the first accused Antony Selvam alone was holding a stick in his hands. However in the latter part of her evidence in the chief examination, she said that the first accused initially attacked the deceased with iron rod and that thereafter, dropping the iron rod, he got the stick from the second accused and attacked the deceased Vijayan. Apart from stopping the deceased, no other overt act was attributed by



PW3 to the second accused Pankeraaj. She has also not stated anything as to how the stick held by the first accused Antony Selvam had gone into the hands of the second accused Pankeraaj.

22. PW3 admits that she is a Roman Catholic and she used to go to church on Mondays and Sundays alone. It is her statement that the occurrence took place on a Saturday. However, in the other part of her evidence in the cross examination, she stated that she used to go to Pentecostal Church; that in the said church there will be a prayer meeting between 9.00 clock and 12.00 noon daily and that she used to go to the said church on Mondays and Sundays. A thorough scrutiny of the evidence of PW3 shows that due to her old age she was not allowed to go anywhere except to the church by her family members and that even on those days she was prevented by her son and daughter from going to church during night hours. It is quite obvious from her evidence that she was prevented from going either to Pentecostal Church or the Roman Catholic Church during night hours. As such, it is highly improbable that she would have gone to the place of occurrence either at 8.30 p.m in accordance with the contents of Ex.P1 or at 10.00 p.m as per the evidence of PW1. The inbuilt contradictions in the evidence of PW3 is also seen from the fact that at one place she stated that she went to the hospital on the day subsequent to the occurrence and saw the deceased Vijayan and that he was in a position to speak to her. However she made a contradictory statement in her evidence that Vijayan did not speak to her but he indicated by a hand signal that he suffered pain in the ribs. At another place PW3 would state that she did not inform the police that the deceased Vijayan informed her of the injuries sustained by him by signals. However in the very next sentence, she stated that she revealed the same to the Investigating Officer, but he did not record it. Again at one place PW3 stated that she accompanied the deceased in the auto-rickshaw to the hospital and at another place she stated that she saw the deceased Vijayan in the hospital the next day while he was taking treatment. In yet another place she has stated that from the date on which Vijayan got admitted in the hospital till his death, she was in the house of Vijayan taking care of the daughter of PW1, since PW1 was in the hospital attending on Vijayan. The same will falsify her statement that she accompanied the deceased in the auto-rickshaw to the hospital and she paid a visit to Vijayan in the hospital on the day next to the date of occurrence.

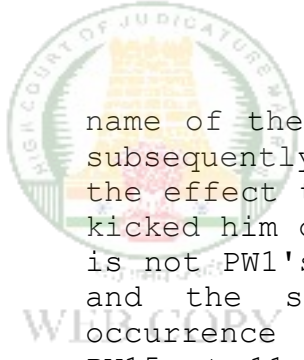
23. It is also pertinent to note that PW1 and PW3 have clearly admitted that in a complaint lodged against the first accused Antony Selvam by PW1 two years prior to the occurrence concerned in this case, PW3 was shown as an eye witness. There is nothing in her evidence to show the purpose for which she had gone to the place of occurrence at odd hours. According to the evidence of PW1, PW3 was not in the place of occurrence when the accused persons attacked deceased Vijayan and only after Francis @ Mani brought an auto-rickshaw on her direction PW3 came there. Had the trial court taken all these aspects into consideration in proper perspective, it would have arrived at a conclusion that the presence of PW3 at the time of occurrence in the scene of occurrence is highly doubtful and improbable. Hence the evidence of PW3 should be disbelieved and the same shall be omitted from the purview of consideration.



24. PW2-Muthu Nadar was a Salesman in the TASMAL shop. According to his own evidence, his duty time was between 9.00 a.m and 11.00 p.m. He would state that even though his duty would have come to an end by 5.30 p.m, he used to be there to help the other Salesmen on Saturdays alone. 03.05.2008, namely the date of occurrence, fell on a Saturday. Though he would have stated that he completed his duty on that day at 5.00 p.m and it was recorded in the register therein, the copy of the register has not been produced. The evidence of PW2 as to who kicked the deceased with the foot is quite contrary to the evidence of PW1 and the contents of the complaint. According to the evidence of PW1, it was the first accused Antony Selvam who kicked the deceased Vijayan with foot. She has not stated that the second accused Pankaraj kicked the deceased Vijayan with his foot. But PW2 gives a contrary version as if he saw the second accused Pankaraj kicking Vijayan using his foot. In fact PW1 in her evidence has not referred to the presence of PW2.

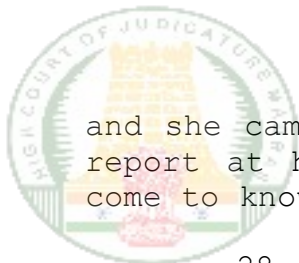
25. It is also pertinent to note that PW2 has not referred to the presence of either PW1 or PW3 in the scene of occurrence. On the other hand, it is his statement that he and one Paulraj alone saw the occurrence and after the occurrence they sent the injured Vijayan to the hospital in an auto-rickshaw of one Arjunan. He has clearly admitted that his junior paternal uncle's son had been murdered and one Joseph son of the second accused was involved in the said murder case. It is also pertinent to note that PW2 was not initially made a witness in the present case and only on re-investigation by PW18, he was added as a witness and the same has been admitted by PW2. It is also quite obvious that he was examined by PW18 and his statement was recorded by PW18 on 25.08.2011. PW2 also states that he was examined on an earlier occasion, namely on 12.08.2011 also. The date of murder of his first cousin took place on 23.03.2010. Therefore, it is quite obvious that he was added as a witness only after the date of the murder of his first cousin. It is also pertinent to note that during cross examination, he gave a contradictory statement that the first accused Antony Selvam did not have an iron rod with him and that he was having only a stick. If all the above said discrepancies and contradictions are taken into account, one can come to a conclusion that PW2 could not be an eye witness and he was added as a witness only after the murder of his junior paternal uncle's son, in which the second accused's son Joseph was arraigned as accused. Therefore, no credence can be attached to the evidence of PW2.

26. If the evidence of PW2 and PW3 are eliminated, then the only available evidence for the occurrence is that of the testimony of PW1. We have seen supra that PW1, apart from being an interested witness, is a clever witness capable of changing her version. Her first statement to the police was recorded by PW15-Mani, the then Head Constable of Eraniyal Police Station. The same has been marked as Ex.P1. Based on Ex.P1 alone, Ex.P16-First Information Report was drawn and a case came to be registered as Crime No.346/2008 on the file of Eraniyal Police Station against the first accused alone for offences punishable under Sections 294(b), 341 and 323 IPC. The said statement has been recorded as if PW1 stated that the occurrence took place at 8.30 p.m (20.30 hours) and he recorded the time as stated by PW1. In the said statement it has been recorded as if PW1 stated that Paulraj was one of the witnesses who saw the occurrence. Apart from Paulraj, Anthony, Tailor Francis and Abinash were shown as the witnesses for the occurrence. In the complaint, the



name of the first accused had been written as Anthony Xavier and it was subsequently corrected as Antony Selvam. The averment made therein is to the effect that the first accused alone attacked the deceased with stick, kicked him on the abdomen and attacked him using his fist on the jaws. It is not PW1's evidence that her signature was obtained on the blank papers and the statement was written subsequently. PW1 states that the occurrence took place at 22.00 hours and her statement was recorded by PW15 at 11.00 p.m on 04.05.2008 at Thilagaram Hospital, Nagercoil. That being so, the particulars could not have been incorporated by PW15 using his imagination or on the dictation of any other person. All necessary particulars to implicate the first accused have been made in the said statement. The age of the daughter of PW1 has also been noted. In the said statement second accused Pankeraj was shown as an eye witness and no overt act was attributed to him. During the initial investigation made by PW16, the then Sub-Inspector of Police and during the further investigation conducted by PW17, the Inspector of Police after the case was altered in to a case of murder, PW1 did not state anything about the involvement of the second accused in the commission of the offence and that was the reason why PW17 submitted a final report arraigning the first accused as the sole accused. After the same was committed for trial to the Sessions Court and was taken on file as S.C.No.100/2008, PW1 seems to have taken steps for re-investigation of the case complaining that her statement to PW15 was not correctly recorded and that the investigation was also tainted.

27. It shall be pertinent to note that PW1 is a graduate and was working as a Manager in a Finance Company. She has made a clear admission that on prior occasion i.e. two years prior to the occurrence, she lodged a complaint against the first accused and the said complaint was written by herself, signed by her and handed over to the police. She is not an illiterate to sign the complaint statement without going through the contents of the same. Ex.P1-complaint statement has been contained 1-1/2 pages with 36 lines. It contains barely ten sentences. The last two sentences are to the effect that she read the contents and found them to be correct " மஹத்வ பார்த்தேன். நான் சொன்னபடி சரியாக உள்ளது." Therefore, the contention of PW1 that her statement was not correctly recorded and she was made to sign the statement without going through the same, is highly doubtful. During cross examination, she admitted that she read the contents of Ex.P1 and accepting the contents to be correct, she affixed her signature. However immediately thereafter, she changed her version and stated that since her husband was in treatment, she signed the said statement without going through the contents. Though she might have made an averment in the affidavit filed before the trial court seeking re-investigation/further investigation of the case that she was not allowed by the Head Constable to read the contents of the complaint statement and was made to sign it without going through its contents, the same has not been corroborated by her oral testimony. She simply states that the Head Constable, who recorded her statement omitted to record certain parts of her statement. However when a pertinent question was put to her as to whether Ex.P1 could be relied on, her answer was that it was partly reliable and partly unreliable. At another place in her evidence in cross examination PW1 has stated that she came to know that she has stated in Ex.P1 that at the time of occurrence Ambal, Paulraj, Pankeraj (2nd accused) and one Francis were there in the scene of occurrence and they saw the occurrence. But she would again state that the same was incorrect



and she came across the mistake only when she read the first information report at her residence. However she was not able to say when did she come to know that such wrong particulars were entered in the FIR.

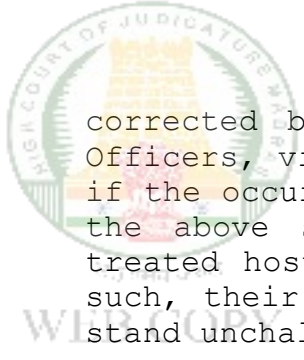
28. The copy of the order of the Madurai Bench of the Madras High Court dated 03.02.2011 made in CrI.R.C.(MD) No.444/2010 has been marked as Ex.P21. In the said order, the affidavit of PW1 has been reproduced. A reading of the affidavit reproduced in the said order shows that even in the affidavit she claimed that the first accused Antony Selvam and the second accused Pankeraaj restrained her husband and quarrelled with him using filthy words asking him why he had not invited for his daughter's puberty function. The affidavit proceeded further to state that soon after the abuse, the first accused Antony Selvam brutally attacked PW1's husband with iron rod on the face, abdomen and other parts and caused severe bodily injuries. The allegation against the second accused/Pankeraaj contained therein is that he abetted the first accused Antony Selvam and supported him in the incident. No other overt act of either attacking the deceased with stick or kicking with foot or pushing him to the ground, on the part of the second accused has been alleged in the said affidavit. From the same, it shall be obvious that PW1 has caused improvement and embellishment by attributing overt acts to the second accused Pankeraaj in her statement made before PW18 and in her evidence before the trial court to implicate the second accused Pankeraaj.

29. Apart from the above said discrepancies, there is also an unexplained contradiction which will go to the root of the case. In fact in her affidavit reproduced in Ex.P21-order she has stated that she gave a statement to PW15 to the effect that the occurrence took place at 22.00 hours (10.00 p.m) on 03.05.2008, but PW15 wrongly wrote it as 20.30 hours (8.30 p.m). That was the main ground on which she was able to get an order for re-investigation by a Sub Divisional Officer of the Police Department. But the Sub Inspector of Police who figured as PW16 and the Inspector of Police, who figured as PW17 have also recorded her statement to the effect that the occurrence took place at 20.30 hours on 03.05.2008. PW1 admits that PW15 to PW17 did not have any animosity or ill-will against her or her husband. It is also her clear admission that PW12-Dr.Balaji, who admitted the deceased in his hospital named Thilagaram Hospital did not have any enmity or ill-will against her. PW12 in his evidence has stated categorically that he was informed by the deceased himself that he sustained injuries due to the attack with a stick on 03.05.2008 at 8.30 p.m. In Ex.P8, Accident Register, it has been noted as follows:

"Place & Mode of injury (RTA/offence) Assaulted by his opposite house owner Mr.Anthony Xavier at about 8.30 p.m"

Date and time of RA : 8.30 p.m on 3/5/08"

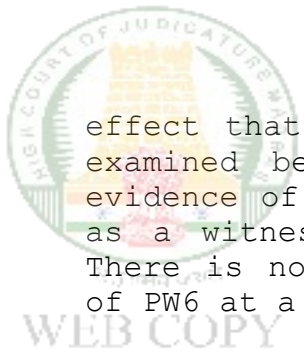
The death intimation sent to the police marked as Ex.P9 also contains the above said particulars. Ex.P10-treatment particulars also contain the very same particulars regarding date and time of occurrence. In Ex.P16-First Information Report also the time and date of occurrence have been noted as 8.30 p.m (20.30 hours) and 03.05.2008. Suppose the time of occurrence has been noted differently in the above said medical documents contrary to the one noted in Ex.P1-complaint statement, which was again reflected in Ex.P16-First Information Report, the same could have been



corrected by PW1 while giving statements to the initial Investigating Officers, viz. PW16 and PW17. But she gave statements to PW16 and PW17 as if the occurrence took place at 8.30 p.m (20.30 hours) on 03.05.2008. All the above said witnesses, namely PW12, PW15, PW16 and PW17 were not treated hostile and cross examined with the permission of the court. As such, their evidence regarding the time of occurrence as informed by PW1 stand unchallenged.

30. In the light of the above said aspects, we have to approach the tantalising stand taken by PW1. In Ex.P1-complaint statement and in the statements given to PW16 and PW17, Vimala Glori Bai (PW1) has referred to Francis @ Mani, Abinеш and Pankeraј (second accused) as the eye witnesses for the occurrence in which the first accused attacked her husband Vijayan. When her attention was drawn to the contents of Ex.P1 and to the statements given by her to PW16 and PW17, PW1 pleaded loss of memory. When a specific suggestion was made to her to the effect that in her affidavit, which was reproduced under Ex.P21-order of the High Court, she did not state that the first accused attacked the deceased with stick on the chest and left side ribs, she conveniently pleaded loss of memory. A perusal of Ex.P1 will show that she did not state that the first accused used a stick to attack the deceased Viaјayan, nor did she state that the first accused kicked the deceased on the abdomen. When her attention was drawn to the said portion of her affidavit, she conveniently pleaded loss of memory. A perusal of Ex.P21 will show that she did not state in her affidavit about the use of stick by the first accused and the act of the first accused kicking the deceased on the abdomen. However in Ex.P1-complaint statement, the weapon allegedly used by the first accused has been shown as stick. It has also been stated in Ex.P1-complaint statement that the first accused kicked the deceased on the abdomen with foot. From the same, it is obvious that the first deviation from the earlier statement found in Ex.P1 came to be made in her affidavit, which has been reproduced in Ex.P21. In the said affidavit, she has changed the weapon allegedly used by the first accused from stick to iron rod. At the same time, she omitted the allegation found in Ex.P1 that the first accused kicked the deceased on the abdomen with foot. The next deviation is found in her evidence as PW1, as she has stated that the first accused used an iron rod and a stick, besides the foot to attack the deceased. The same will show the contradiction and the gradual improvement and embellishment made by PW1.

31. In addition, none of the persons referred to as eye witnesses in Ex.P1-complaint statement has been examined as a witness on the side of the prosecution. Even Francis @ Mani and Paul Raj shown as eyewitnesses by PW1 in her evidence, were not examined as prosecution witnesses in the trial court. According to the evidence of PW1, she and Francis @ Mani took the deceased to the hospital. But the said Francis @ Mani has not been examined as a witness on the side of the prosecution. PW1 did not state the name of the owner/driver of the auto-rickshaw in which the deceased was taken to the hospital. According to PW2's evidence, the deceased was taken to the hospital in one Arјunan's auto-rickshaw. The said Arјunan has been examined as PW6. PW3 not stated the name of the driver of auto-rickshaw. PW3 in her evidence states that one Abinеш, PW1 and the auto driver took the deceased to the hospital. It is her evidence that Mani, who took the deceased in the auto-rickshaw was not alive as the date of her examination as PW3. The same is to the

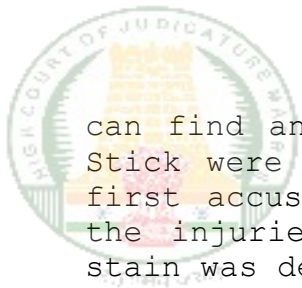


effect that Mani was the auto driver and he was not alive when PW3 was examined before the trial court. A comparative consideration of the evidence of PW1, PW2, PW3 and PW6 will show that PW6 has been introduced as a witness subsequent to the order directing further investigation. There is no explanation for the said contradiction and the introduction of PW6 at a later point of time.

32. In addition, there are also contradictions as to whether the deceased was straight away taken to Thilagaram Hospital, Nagercoil from the place of occurrence or he was given first aid treatment at Prakash Hospital before being shifted to Thialgaram hospital. PW1 and PW6 would state that when they went to Prakash Hospital, there was no doctor available and hence the deceased Vijayan was taken to Thilagaram Hospital, Nagercoil. But in her affidavit referred above and found in Ex.P21, Vimala Glori Bai (PW1) has stated that her husband was taken to Prakash Hospital at Villukuri, where first aid treatment was given and then as per the advice of the doctor at Prakash Hospital, the deceased was removed from Prakash Hospital and shifted to Thilagaram Hospital and admitted there as an in-patient. When questioned about the same found in her affidavit, PW1 again conveniently placed herself in the cover of loss of memory.

33. A meek attempt was made by the prosecution by examining PW4-Jayasingh to show that the accused were waiting at a place for the arrival of the deceased Viajayan with the intention of attacking him. But PW4 failed to support the case of the prosecution. He simply stated that the accused were discussing something loudly near the house of one Savarimuthu and he advised them not to cause any problem. Though the prosecution, while cross examining him with the permission of the court treating him hostile, was able to elicit an answer from him to the effect that he advised the accused not to do any harm to the deceased Vijayan, during the cross examination made by the counsel for the accused persons, PW4 made it clear that he did not know what was the subject matter of their discussion. The inbuilt contradiction found in the evidence of PW4 will make his evidence unreliable. Hence no credence can be attached to the evidence of PW4 and his evidence does not render any assistance to the prosecution to prove its case.

34. The prosecution relies on the theory of confession leading to recovery of weapons from the accused persons. It is quite obvious that no recovery was made by PW16, the initial investigating officer, during his investigation till the death of the deceased. Only after the death of Vijayan and after the alteration of the case into a murder case, the confession statement of the first accused was allegedly recorded by PW17 in the presence of PW7-Village Administrative Officer and Assistant. MO2-stick was alleged to have been recovered from first accused under Ex.P4-Mahazar on the basis of the information furnished by him in his confession statement, the admissible portion of which has been marked as Ex.P3. After further investigation was ordered by this court, the second accused Pankeraj was arrested by PW18 on 23.08.2011. According to the prosecution case, based on the admissible portion of his confession statement marked as Ex.P5, MO1 rusted iron rod was recovered from the eyes of his house under Ex.P7-mahazar. PW8-Gnanaprakasam has been examined as one of the attestors of the confession statement and an attestor of the Seizure Mahazar. But it is his clear admission that one



can find any number of any rods like MO1. Though MO1-iron rod and MO2-Stick were said to have been recovered from the second accused and the first accused respectively, there is no evidence to link the same with the injuries found on the deceased, which led to his death. No blood stain was detected on the above said material objects.

WEB COPY

35. Though PW2 - Dr.Balaji has stated in his evidence that the injuries found on the deceased could have been caused by a stick like MO2 or iron rod like MO1, he has also admitted that except the wound found on the face of the deceased, there was no other external injury. It is also his admission that except the injury found on the face there was no external injury on the other parts of the body, which could have been caused by a stick or iron rod. Ex.P13 is the post mortem examination report. By PW13-Medical Officer, who conducted autopsy, the following ante-mortem injuries were found in the dead body of the deceased:

- 1) 5 x 2 cm abrasion seen over the right side of the forehead
- 2) 3 x 1/2 cm abrasion seen over the right of the root of nose
- 3) 1/2 x 1/2cm abrasion seen over the left side of face
- 4) Left medial upper incisor and left upper canine found uprooted
The sockets were filled blood clots.
- 5) 1 x 1/2 cm abrasion seen over the centre of lower jaw
- 6) 4 cm long linear scratch abrasion seen over the center of lower chest
- 7) 1 x 1 cm abrasion seen over the left side of lower back
- 8) 1 x 1/2 cm x liver deep incised punctured wound seen over the right side of outer aspect of lower chest.
- 9) 2 x 1/2 cm peritoneal cavity deep incised punctured wound seen over the right side of outer aspect of lower abdomen
- 10) 2 x 1/2 cm x peritoneal cavity deep incised punctured wound seen over the left side of lower abdomen.

On dissection of the chest and abdomen, the following particulars were also found.

"Fracture of 4 to 8th ribs on right side in their back with surrounding contusion noted. Peritoneal cavity contains 200 ml of greenish yellow colour foecal material. The loops of intestine and the peritonium found adherent. Pus material found sticking to the loops of intestine of ileum. Ileum found perforated 15 cm away from the illeacal junction loops of small intestine found contused. Liver-collection of blood noted inside the liver measuring about 100 gms."

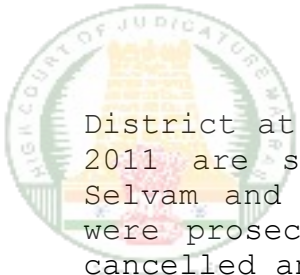
Ex.P14 is the final opinion regarding the cause of death. It has been stated therein that the deceased would have died of Fecal Peritonitis, a complication of injury to the small intestine. PW13, who conducted autopsy, made it clear that injury No.1 could have been caused by a weapon like MO2-stick, but there was no possibility of injury No.2 having been caused by MO2-stick. He has also admitted that the injuries 1 to 3 and 5 were superficial. It is his evidence that the 6th injury was an abrasion/incised wound. He has also admitted that there was no external injury corresponding to injury No.4. Injury Nos.8 to 10 were incised wounds caused at the time of treatment. They are referred to by PW13 in his chief examination itself as clinical injuries.



36. Under the said circumstances, this court cannot rule out the possibility of the injuries found in the liver and small intestine having been caused clinically during the treatment. Admittedly the injury found on the liver could have caused the death, if left unattended. However death is said to have occurred due to Fecal Peritonitis, a complication of injury to the small intestine. The said injury should have been surgically treated, as death was inevitable if it was not done. PW12 himself admits that the injury found in the liver was capable of causing immediate death. But PW13 gave evasive answer by stating that it may or may not cause such death. However PW13 admits that for the injury found on the small intestine, immediate surgery was needed. But he would say that it was not done, because the patient's condition was not stable. However PW13 himself has stated that the deceased was semi-conscious and he was able to speak, but with incoherency, from 3.5.2008 to 7.5.2008. PW13 knew well that death would be the result, if the injury found in the small intestine was not treated by surgery and suturing the same to close the hole. Still he had chosen not to do it. It is quite obvious from the testimony of PW13, the Medical Officer, who conducted autopsy that the injury found on the small intestine of the deceased causing death if it is not immediately attended to and the hole is plucked by suturing. The very fact that the deceased survived for more than three days will show and at least give a reasonable suspicion that the said injury could not have been inflicted in the occurrence and it could have been inflicted only during the treatment in the hospital, as it corresponds to one of the holes surgically made in the outer surface of the abdomen. Hence it is quite probable that the injury to the small intestine could have been caused during treatment. In any event, the punctured wound in the small intestine could not have been caused either by MO1-iron rod or MO2-Stick. The same is the reason why gradual improvement and embellishments were made in the prosecution case by PW1. In fact it is quite obvious that, after going through the post-mortem examination certificate, PW1 tried to distribute the injuries towards the alleged overt acts of the accused persons. The same is the reason why there are material contradictions, as indicated supra.

37. To be brief, the evidence adduced on the side of the prosecution regarding the occurrence are not reliable. The story of the prosecution has not been substantiated by cogent and reliable evidence. The learned trial Judge, without properly appreciating the oral and documentary evidence and the improvements and embellishments made in the prosecution case, has blind-foldedly arrived at a conclusion that the charges for offences under Sections 294(b) and 302 IPC against the first accused and the charges for offences under sections 341 and 302 IPC for the second accused stood proved and held them guilty of the respective offences. Had the trial Judge adopted the correct approach, he would have held that none of the charges was proved to the hilt and acquitted first and second accused of all the offences for which they stood charged. As it was not done, this court holds that the judgment of the trial court is discrepant, erroneous and liable to be set aside and that the accused are entitled to be acquitted in respect of all the offences for which they stood charged.

38. In the result, the criminal appeal is allowed. The conviction and sentence imposed by the learned Principal Sessions Judge, Kanyakumari



District at Nagercoil, by judgment dated 24.09.2013 made in S.C.No.103 of 2011 are set aside. The appellants/accused 1 and 2, namely M.Antony Selvam and A.Pankeraaj are acquitted of all the offences for which they were prosecuted. The bail bond, if any, executed by them shall stand cancelled and fine amount, if any, paid by them shall be repaid to them.

Sd/

Assistant Registrar(CS-II)

WEB COPY

/True Copy/

Sub Assistant Registrar.

To

- 1 The District Munsif -cum- Judicial Magistrate, Eraniel.
- 2 The Chief Judicial Magistrate, Kanniyakumari at Nagercoil.
- 3 The Principal Sessions Judge, Kanyakumari at Nagercoil.
- 4 The District Collector, Kanniyakumari District.
- 5 The Director General of Police, Mylapore, Chennai-4
- 6 The Deputy Superintendent of Police, Kanyakumari Sub Division
Eraniyal Police Station, Kanyakumari District
- 7 The Superintendent, Central Prison, Palayamkottai, Tirunelveli District.
- 8 The District Collector, Tirunelveli.
- 9 The Secretary to Government, Home, Prohibition and Excise Department,
Secretariat, Chennai-9.
- 10 The Additional Public Prosecutor, Madurai Bench of Madras High Court,
Madurai.
- 11 The Inspector General of Prisons, Chennai.

+1CC to M/S.K.Prabhu, Advocate, SR.No. 24322

Judgment in
Crl.A.(MD) No.304 of 2013
Date : 26 -04-2016

AM/JGB.SS/09.05.2016/20P/13C