



Bail Slip
M.P. (MD) No.1 of 2011
in
Crl.A. (MD) No.204 of 2011

WEB COPY The Appellant / Sole Accused viz Mathiazhagan, S/o.Muthu, Male was directed to be released on bail by Order of this Court dated 21.12.2011 and made in M.P. (MD) No.1 of 2011 in Crl.A (MD) No.204 of 2011.

Bail Slip
M.P. (MD) No.1 of 2011
in
Crl.A. (MD) No.229 of 2011

The Appellants Accused viz 1) Ayyanar (A1), S/o.Muthu Servai, 2) Muthirulu (A2), S/o.Kulla Mayandi was directed to be released on bail by order of this Court dated 27.02.2012 and made in MP (MD) No.1 of 2012 in Crl.A (MD) No.229 of 2011.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

AND

THE HONOURABLE MR.JUSTICE V.S.RAVI

CRL.A(MD) No.204 of 2011

AND

CRL.A(MD) No.229 of 2011

CRL.A(MD) No.204 of 2011

Mathiazhagan

.. Appellant / Accused No.3

Vs.

The State rep. by the
Inspector of Police,
Tiruppachethi Police Station,
Sivagangai District.
(In Crime No.41 of 2008)

.. Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., praying this Court, to call for the records relating to the Judgment delivered in S.C.No.39 of 2009 dated 07.07.2011, on the file of the learned Principal District & Sessions Judge, Sivagangai and to set aside the same as illegal and allow the above appeal and pass such further orders, as this Court may deem fit and proper in the circumstances of the case.

**CRL.A(MD)No.229 of 2011**

1. Ayyanar
2. Muthirulu

.. Appellants/Accused Nos.1 & 2

Vs.

The State rep. by the
Inspector of Police,
Tiruppachethi Police Station,
Sivagangai District.
(In Crime No.41 of 2008)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C., praying this Court, to call for the records relating to the Judgment delivered in S.C.No.39 of 2009 dated 07.07.2011, on the file of the learned Sessions Judge, Sivagangai and to set aside the same and thus render justice.

For Appellants : Mr.A.Velan, Advocate
for M/s.Ajmal Associates
(in CRL.A(MD)No.204 of 2011)

Mr.S.M.A.Jinnah, Advocate
(in CRL.A(MD)No.229 of 2011)

For Respondent : Mr. K.S.Duraipandian
Additional Public Prosecutor
(in both Criminal Appeals)

Judgment reserved on : 11.12.2015

Judgment pronounced on : 19.02.2016

COMMON JUDGMENT

The appellant in Crl.A.(MD)No.204 of 2011 is the third accused and the appellants in Crl.A.(MD)No.229 of 2011 are the Accused Nos.1 and 2 in S.C.No.39 of 2009 (Crime No.41 of 2008), on the file of the learned Sessions Judge, Sivagangai. The accused Nos.1 to 3 have been charged for the offence under Sections 307 and 302 r/w 34 I.P.C., and the other accused No.4 Mareeswari has been charged for the offence under Sections 341, 307 r/w 34 and 302 r/w 34 I.P.C. The trial Court, by Judgment dated 07.07.2011, acquitted the said accused No.4 Mareeswari, from all the charges, but convicted the accused Nos.1 to 3, for the offence under Section 302 r/w 34 I.P.C., and sentenced them to undergo Life Imprisonment each and also imposed the fine amount of Rs.500/- each and, in default, to undergo Rigorous Imprisonment for the period of two years each and also, convicted them for the offence under Section 324 I.P.C., and sentenced them to pay the fine amount of Rs.250/- each and in default, to undergo Rigorous Imprisonment for the period of one month each. Challenging the said conviction Judgment delivered in S.C.No.39 of 2009, the appellants/accused Nos.1 to 3 in Crime No.41 of 2008, are before this Court with the present appeals, praying the above mentioned reliefs, before this Court and they have been granted the suspension of



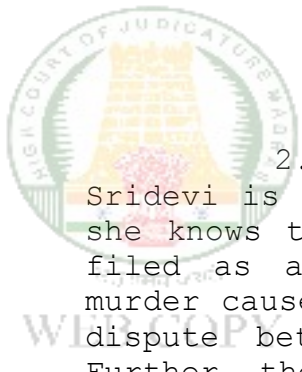
sentence, passed by this Court.

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

The deceased Sridevi is the wife of the P.W.1 Thavamani and the P.W.2 Pappa is the mother of the deceased. The P.W.1 has been acquitted, in the criminal appeal case, filed for the case of murder of Eswari, mother of the first accused, by the P.W.1 and hence, there arose an enmity between the P.W.1's family and the accused's families and on 13.04.2008 at 5.00 p.m., the P.W.1 has gone to Ayyanar temple, which is situated nearer to the house of the P.W.2, along with his son Rajakumar and at that time, the said Sridevi, namely, the wife of the P.W.1 and the P.W.2, namely, the mother-in-law of the P.W.1, sitting in front of the house of the P.W.2 and they have talked to each other and when, the P.W.1 has gone towards certain distance, he has heard the loud noise and the P.W.1 has come to the P.W.2's house and at that time, the accused have brutally assaulted the said Sridevi with the help of spear and sword and also, the accused have assaulted the P.W.2 with the help of spear and sword and the deceased Sridevi, due to such assault, died and thereby the accused Nos.1 to 3 have committed the above mentioned offences, according to the prosecution.

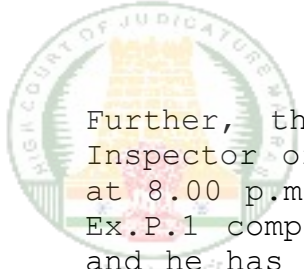
2.1. In order to prove the case of the prosecution, the prosecution has examined 12 witnesses as P.W.1 to P.W.12 and also marked 16 exhibits as Ex.P.1 to Ex.P.16 and also Material Objects as M.O.1 to M.O.8.

2.2. P.W.1 Thavamani has stated that the deceased Sridevi is his wife and the injured P.W.2 is his mother-in-law and he knows the accused Nos.1 to 4 and there is a criminal case, filed as against him, alleging that the first accused's mother Easwari has been murdered by the P.W.1 and others and in the said criminal case, the P.W.1 has been acquitted in appeal and hence, there is an enmity between the family members of the P.W.1 and the accused's family and two years, before the date of giving his evidence before the Lower Court, the P.W.1 has gone to the Ayyanar temple, along with his son Rajakumar, which is nearer to the house of the mother-in-law of the P.W.1, namely, P.W.2 Pappa, on 13.04.2008, in the evening hours, at about 5.00 p.m., and at that time, the P.W.2 and the said Sridevi have talked to each other, in the P.W.2's house and he has gone to certain distance from his mother-in-law's house, thereafter, he has heard the loud noise from his mother-in-law's house and thereafter, he has returned to the mother-in-law's house and also, the other accused have caught hold off, both the hands of the said Sridevi and at that time, the first accused has assaulted the said Sridevi, with the help of Spear and again the first accused has assaulted the said Sridevi, with the help of Spear and the second accused has assaulted the said Sridevi, with the help of Spear and thereafter, the first accused has assaulted the P.W.2, with the help of Spear and the second accused has also assaulted the P.W.2, with the help of Spear and thereafter, he has seen the dead body of the deceased Sridevi and he has not seen the third accused, in the scene of occurrence and he has taken the injured mother-in-law of the P.W.1 to the hospital, in an Auto and the P.W.1 and his father have gone to the police station and lodged the complaint as per Ex.P.1 and his father has also signed in the said complaint. However, as he has not supported the case of the prosecution in full, and hence, he has been treated as a hostile witness.



2.3. Further, the P.W.2 Pappa has stated that the deceased Sridevi is her daughter and the P.W.1 is the husband of the deceased and she knows the accused Nos.1 to 4 and already the criminal case has been filed as against the son-in-law, namely, the P.W.1, for the alleged murder caused to the first accused's mother Easwari and hence, there is a dispute between the family of the P.W.1 and the accused's family. Further, the P.W.2 has stated that the other accused has caught hold off, both hands of the said Sridevi and also the accused No.4 has instigated the accused Nos.1 to 3, to murder the said Sridevi and at that time, the first accused has assaulted her daughter, namely, the said Sridevi, with the help of Spear and the second accused has also assaulted the said Sridevi, with the help of Spear and the third accused has assaulted the said Sridevi, with the help of Sword and she has requested the accused, not to assault her daughter and thereafter, the accused Nos.1 and 2 have assaulted the P.W.2 also, with the help of M.O.Nos.2 and 3 Spears and the third accused has assaulted her, with the help of M.O.1 Sword and the said Sridevi, due to the said assault, died and she has also identified the M.O.Nos.1 to 3. Further, the P.W.3 Angunathan has stated that he knows the deceased Sridevi and the P.W.2 and also, he knows all the accused and prior to two years of giving his evidence, the police have seen the place of occurrence and also, they have prepared the Observation Mahazar as per Ex.P.2 and he has signed in the Observation Mahazar of Ex.P.2 and also, in the Athatchi of Ex.P.3, for the recovery of M.O.4 bloodstained earth and M.O.5 sample earth. Further, the P.W.4 Thiru.Kajendran, Village Administrative Officer has stated that he has worked as Village Administrative Officer at Thiruppachethi and on 14.04.2008, at afternoon 1.00 p.m., the first accused has given the confession statement and the Ex.P.4 is the admissible portion of the confession statement and thereafter, the first accused has produced the M.O.1 Sword and M.O.2 and M.O.3 Spears, from the place of Soorapalam and the police have recovered the said material objects in the Athatchi as per Ex.P.5 and the P.W.4 and the Village Assistant Subbaiya have also signed in the said Ex.P.5 and also, they have signed in the said confession statement, given by the first accused and the third accused has also given the confession statement, on 29.04.2008 at 6.00 a.m., and they have also signed in the said confession statement.

2.4. Further, the P.W.5 Thiru.Manikandan has stated that he has worked as Grade-I Police Constable in Thiruppachethi police station and on 13.04.2008, he has taken the Ex.P.7 First Information Report in Crime No.41 of 2008 and he has gone to the Court of the learned Judicial Magistrate, Manamadurai, and the learned Judicial Magistrate has taken a leave, and hence, he has handed over the said F.I.R., to the learned Judicial Magistrate No.I, Sivagangai at night 2.00 a.m. Further, the P.W.6 Thiru.Mathialagan has stated that he has worked as Head Constable in Thiruppachethi Police Station, on 14.04.2008 and he has handed over the dead body of the deceased Sridevi to Manamadurai Government hospital, for conducting Postmortem, and after, the completion of the Postmortem, he has handed over the dead body to the relatives of the deceased person and the Ex.P.6 is the Requisition Letter, submitted by the Inspector of Police, for conducting the Postmortem on the dead body of the deceased Sridevi and also, he has recovered the M.O.Nos.6 to 8, namely, the dresses of the deceased, after the completion of the Postmortem, and handed over the said material objects to the Inspector of Police.



Further, the P.W.7 Thiru.Seran has stated that he has worked as Sub Inspector of Police, in Thiruppachethi Police Station, on 13.04.2008 and at 8.00 p.m., the P.W.1 Thavamani has appeared before him and lodged the Ex.P.1 complaint and he has registered the case in Crime No.41 of 2008 and he has prepared the First Information Report as per Ex.P.7 and also, he has submitted the said First Information Report to the concerned learned Judicial Magistrate and concerned Higher Officials, through the P.W.5 Grade-I Police Constable.

2.5. Further, the P.W.8 Tmt.Jeyalakshmi has stated that she has worked as Head Clerk of the Court of Judicial Magistrate, Manamadurai on 21.04.2008 and she has sent the material objects for conducting Forensic Science Examination, as per the Ex.P.10 Court Letter and the Ex.P.11 is the Chemical Analysis Report and the Ex.P.12 is the Serology Report. Further, the P.W.9 Dr.Senthilkumar, who has conducted the Postmortem on the dead body of the deceased Sridevi, has stated that he has served as Government Doctor in Manamadurai Government Hospital, and on 14.04.2008 he has conducted the Postmortem, on the dead body of the deceased Sridevi and issued the Postmortem Certificate as per Ex.P.13 and in the said Postmortem Certificate, the P.W.9 has given his opinion that the deceased would appear to have died of stab injury of heart which causes haemorrhage shock and death. Further, the P.W.10 Dr.Duraimurugan has stated that he has served as Doctor in Rajaji Government Hospital, Madurai and on 13.04.2008, he has examined the P.W.2 Pappa and issued the Accident Register as per Ex.P.14. Further, the P.W.11 Thiru.Mangaleswaran has stated that he has served as Inspector of Police in Thiruppachethi Police Station and on 13.04.2008 at 21 hours, he has prepared the Observation Mahazar and Rough Sketch as per Ex.P.2 and Ex.P.15 and at 22 hours, he has recovered the M.O.4 bloodstained earth and the M.O.5 sample earth, from the place of occurrence, in the Athatchi as per Ex.P.3 and also, he has prepared the Inquest Report as per Ex.P.16. Further, the P.W.11 has deposed that on 14.04.2008 at 13.30 hours, he has arrested the accused Nos.1 and 2 and also, he has recorded the confession statement, given by the first accused and the Ex.P. 4 is the admissible portion of the confession statement and also, he has recovered the M.O.1 Sword and the M.O.Nos.2 and 3 Spears, in the Athatchi as per Ex.P.5 and also, he has recorded the statement from the injured P.W.2 and thereafter, on 15.04.2008, he has handed over the case records to the P.W.12 Inspector of Police, for further investigation.

2.6. Further, the P.W.12 Thiru.Seeralan has stated that he has served as Inspector of Police 16.04.2008 and he has taken the case for further investigation and on 29.04.2008 at 6.00 a.m., he has recorded the confession statement, given by the accused Nos.3 and he has enquired the other prosecution witnesses and doctors and thereafter, he has filed the final report on 18.06.2008, as against the accused.

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

4. Having considered all the above materials on record, the Trial Court has convicted the accused Nos.1 to 3, as mentioned in the beginning of this Judgment and challenging the said Judgment of the Trial



Court, the appellants/accused in both Criminal Appeals, have come forward with the present appeals.

5. Common Grounds raised in both appeals, on behalf of the appellants/accused, are as follows:-

The Trial Court ought to have seen that the prosecution witnesses have failed to prove the date and time of occurrence, in a manner known to law. The Trial Court has failed to note that the eyewitness of P.W.1 Thavamani, namely, the husband of the deceased Sridevi, has deposed before the Court that there is no presence of the third accused, in the scene of occurrence and also, he has never stated anything about the third accused in the Ex.P.1 complaint and hence, the Ex.P.1 complaint is doubtful. The prosecution has miserably failed to connect the appellants with the recovery of the M.O.1 Sword. The case of the prosecution is contrary to the medical evidence of the P.W.9. The P.W.10 Dr.Duraimurugan has stated in his evidence that he has given treatment to the P.W.2 on 13.04.2008 at about 9.00 a.m., but, the occurrence has alleged to have happened at about 6.00 p.m., on 13.04.2008 and as such the time of the occurrence and place of occurrence is highly doubtful. The evidence of the P.W.4 has created serious doubts over the case of the prosecution and the entire records have been prepared at the police station. The Trial Court has failed to see that the accused Nos.1 to 3 have joined together, so as to cause the death of the deceased, is highly imaginary and cannot stand under the scrutiny of law. The P.W.1 has been treated as a hostile witness, by the prosecution, but the Trial Court has believed the evidence of the P.W.1 and the same is contrary to law. The Trial Court ought to have brushed aside the evidence of the P.W.1 and there is no chance for him to see the alleged occurrence. The evidences of the P.W.1 and P.W.2 are contrary to the assault caused by the appellants, to the deceased on her right palm. The P.W.1 and the P.W.2 have not identified the M.O.Nos.1 to 3, and the Trial Court has failed to consider the said details. The Trial Court has not considered that the Ex.P.7, F.I.R., reached to the learned Judicial Magistrate, Manamadurai, belatedly. The P.W.10, who has given treatment to the P.W.2, has stated in his evidence that the injuries have been caused by the M.O.Nos.1 to 3. However, he has not verified the said material objects and it is an unacceptable evidence and contrary to law and justice. In the circumstances, the appellants have submitted to set aside the said sentence and conviction, imposed by the Trial Court.

6. The points that arise for consideration in both Criminal Appeals which have been filed as against the same Judgment delivered in S.C. No. 39 of 2009, are as follows:-

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

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



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

The learned counsel for the appellants have vehemently submitted that there is no clinching and trustworthy testimony of the eyewitnesses of the prosecution. According to the learned counsel for the appellants that there are no reliable eyewitnesses, to establish the guilt of the appellants. Further, the learned counsel for the appellants have submitted that the circumstances have not been established by the prosecution, in an acceptable manner, to establish the guilt of the appellants. Further, there are vital contradictions and material contradictions in the evidences of the prosecution and there is doubt, in the genesis of the Ex.P.1 complaint, lodged by the P.W.1. Further, the learned counsel for the appellants have submitted that the prosecution witnesses have not come forward with true version and the appellants are entitled to get, acquittal.

8. On the other hand, the learned Additional Public Prosecutor for the respondent has submitted that the evidences of the prosecution are reliable and trustworthy and the fact, remains that the genesis of the crime, is not suppressed and the presence of the prosecution witnesses, at the scene of occurrence, is not doubtful. Further, there is no serious infirmities and inconsistencies in the evidences of the prosecution witnesses and the prosecution has established the case beyond reasonable doubts and there are cogent and clear evidences, to connect the appellants to the said crime.

9. For the convenience, in the present Judgment, the appellant/accused No.3 in CrI.A(MD)No.204 of 2011 and the appellants/accused Nos.1 and 2, in CrI.A(MD)No.229 of 2011 are, hereinafter, referred to, as the accused Nos.1 to 3. Though, the fourth accused Mareeswari has been charged for the offence under Sections 341, 307 r/w 34 and 302 r/w 34 I.P.C, the Trial Court has granted acquittal to the said fourth accused. Further, P.W.1 Thavamani has deposed that the deceased Sridevi is the wife of the P.W.1 and the P.W.2 Pappa is the mother-in-law of the P.W.1 and he knows all the accused and already, one murder case has been filed, as against him, regarding the alleged murder caused to the mother of the first accused and in the said Criminal Appeal, the P.W.1 has been acquitted and regarding the said incident, there is a dispute between the P.W.1's family and the accused family and due to the said motive, the accused have assaulted the deceased, namely, the wife of the P.W.1 and the P.W.2. Further, the P.W.2 Pappa, namely, the mother-in-law of the P.W.1 has also admitted in her evidence that already there existed a criminal case, regarding the murder caused to the first accused's mother, namely, Easwari, by the P.W.1 and due to that, there is an enmity between the P.W.1's family and the accused family. Further, it is found that the P.W.1 is the husband of the deceased Sridevi and also the P.W.2 is the mother of the deceased and in the said circumstances, it is crystal clear that the evidences of the P.W.1 and the P.W.2 have to be examined with due care and caution by the Court. As the motive alleged by the P.W.1 is a double edged weapon and also there are chances for the P.W.1 and the P.W.2 to falsely implicate the accused, in view of the already existed dispute between the P.W.1's family and the accused family and also, for the above mentioned circumstances, the evidences of the P.W.1 and the P.W.2 have to be examined with extra care.



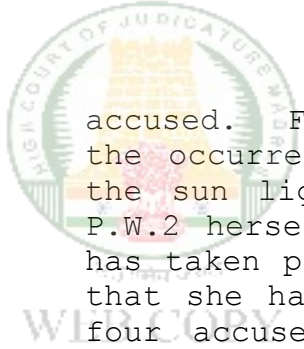
10. Further, the P.W.2 has deposed that on 13.04.2008 at evening 6.00 p.m., the P.W.1 has gone to the nearby Ayyanar temple, along with his son and the P.W.2 and the said Sridevi have talked to each other, by sitting in the front of P.W.2's house, as pointed out in the Ex.P.15 Rough Sketch and the P.W.1 along with his son have crossed them and gone to some distance and thereafter, the accused Nos.1 to 4, came to the place of occurrence and the said Sridevi has been caught hold off, by the accused No.4, in front of the house of the P.W.2 and the accused Nos.1 to 3 have assaulted and caused stab and cut injuries, with the M.O.2 Spear, M.O.3 Spear and the M.O.1 Sword, for the purpose of murdering her and the first accused has assaulted the said Sridevi, with Spear and the second accused has also assaulted the said Sridevi, with Spear and also, the third accused has assaulted the said Sridevi, with M.O.1 Sword and P.W.2 has requested the accused, not to assault the said Sridevi and the accused Nos.1 to 3 have assaulted her, with the Spears and Sword and the third accused has got M.O.1 Sword in his hand and he could not specifically say, as to which Spear of M.O.Nos.2 and 3 have been used by the accused Nos.1 and 2. However, the P.W.1, who is the son-in-law of the P.W.2, has categorically deposed that he has lodged the Ex.P.1 complaint to the police and also, the P.W.1 has denied the suggestion that the third accused Mathiyazhagan has assaulted the deceased with knife and the third accused has assaulted the deceased, on her chest. Hence, it is seen that the evidences of the P.W.1 and the P.W.2 are not clear and cogent, to establish the case of the prosecution.

11. Further, the P.W.1 has deposed that only the accused Nos.1 and 2 have come to the scene of occurrence, armed with Spear and assaulted his wife and also the P.W.2 and he has not seen the third accused, in the place of occurrence. Further, in the Ex.P.1 complaint also, the P.W.1 has stated that he has seen the occurrence, namely on 13.04.2008 at 6.00 p.m., the accused Nos.1 and 2 have assaulted the deceased and the P.W.2, with Spear and the third accused Mathiyazhagan has assaulted the deceased with knife. However, in the evidence of the P.W.1, he has categorically denied that the third accused has not assaulted the deceased, with knife. On that ground also, it is found that the P.W.1 has not lodged the Ex.P.1 complaint with full and correct details. Further, in the Ex.P.1 complaint itself, the P.W.1 has categorically admitted that due to the brutal assault caused by the accused, the murder has been caused to the deceased and in the said complaint, he has admitted that he has taken the injured P.W.2 and sent her to the hospital, in an Auto. In such circumstances, the dresses of the P.W.1 would have sustained bloodstains, but, he has not handed over any bloodstained dresses to the police. Further, it is found that the evidences of the eyewitnesses, namely, the P.W.1 and the P.W.2, are not clear and natural, so as to accept their evidences, as wholly reliable testimonies. Further, the P.W.1 has categorically admitted in his testimony that he has not made any complaint as against the third accused. Further, the P.W.1 has admitted in his testimony that his friend only has written the Ex.P.1 complaint and however, the prosecution has failed to examine the said friend of the P.W.1, to establish the said statement of the P.W.1. Further, on a careful analysis of the evidences on the side of the prosecution, it is found that there are serious doubts, with regard to the Ex.P.1 complaint.



12. Further, the P.W.1 has not deposed anything about the third accused Mathiyazhagan and in such circumstances, the P.W.1 has been treated as a hostile witness, by the prosecution. Hence, the case of the prosecution has been weakened by treating the P.W.1, as a hostile witness who is a prime witness, and also, he has not supported the case of the prosecution, fully. Further, the P.W.1 has admitted in his evidence that only his friend has written the Ex.P.1 complaint. But he has not stated, even the name of the said friend, who has written the said complaint. Further, the P.W.7 Thiru.Seran, Sub Inspector of Police has admitted that one Karunanidhi, Head Constable, working in some other police station has written the Ex.P.1 complaint. However, the said Karunanidhi, Head Constable who has written the Ex.P.1 complaint, has not been examined by the prosecution. Hence, it also sparks doubt, with regard to the genuineness of the said complaint. Further, the P.W.7 has admitted that the said Karunanidhi has actually attached to the Manamadurai police station and the present case has been filed by Thiruppachethi police station, in Crime No.41 of 2008. Further, the P.W.5 Thiru.Manikandan has deposed that he has submitted the Ex.P.7 printed First Information Report to the learned Judicial Magistrate, Sivagangai on 14.04.2008 at 3.45 a.m. Further, the P.W.5 has deposed that he has submitted the said First Information Report copy to the learned Judicial Magistrate No.1 (incharge), Sivagangai. Further, in the cross examination of the P.W.5, he has deposed that at mid night 2 hours itself, he has submitted the said First Information Report copy to the learned Judicial Magistrate No.1, Sivagangai. However, he himself has admitted in his evidence that the learned Judicial Magistrate has made an endorsement to the effect that the said First Information Report has been received by the learned Judicial Magistrate only on 14.04.2008 at 3.45 a.m. Further, he has deposed that he has submitted the passport, regarding the details of the submission of the said First Information Report to the learned Judicial Magistrate to the police station. However, the said Passport has not been filed by the prosecution. Further, it is found that there are four multiple accused alleged, to be involved in the crime, by the prosecution. Hence, the prosecution has to prove the alleged crime committed by the accused with consistent and credit worthy evidences and materials available on record.

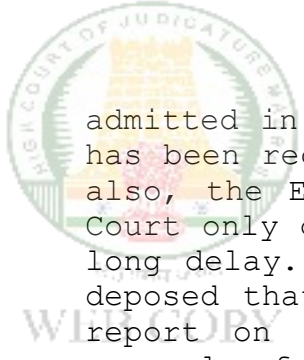
13. Further, the P.W.3 Angunathan has admitted that he does not have any knowledge to read letters and hence, he does not know, the details in the papers, in which the police have obtained his signature and he does not know the contents of the said records, namely, the Ex.P.2 Observation Mahazar and the Ex.P.3 Athatchi. Further, the P.W.3 has clearly admitted that there is no talking terms between the the first accused's family and the third accused's family, for the past two years. On that ground also, it is found that the evidence of the P.W.3 is also not clearly supporting the case of the prosecution. Further, the P.W.1 has categorically admitted in his testimony that he has not seen the third accused in the occurrence place. Further, the P.W.1 has admitted in his evidence that he has raised loud noise, on seeing the alleged brutal assault caused by the accused, on the deceased Sridevi and the P.W.2. Further, the P.W.1 has admitted that there is an enmity already existed between the P.W.1's family and the accused family and hence, there is a possibility to falsely implicate the accused, in the alleged offence. Further, the P.W.2 has also got an enmity as against the



accused. Further, the P.W.2 has admitted in her cross examination that the occurrence has taken place at evening 6.00 p.m., and at that time, the sun light has been seen in the place of occurrence. However, the P.W.2 herself has admitted in the cross examination that the occurrence has taken place at night hours 8.00 p.m. Further, the P.W.2 has deposed that she has stated to the P.W.10 Government Doctor at Madurai that the four accused have assaulted them with weapons and however, the P.W.1 himself has deposed that he has not stated anything about the third accused and he has not seen the third accused in the place of occurrence. However, in the complaint, namely, Ex.P.1, he has stated that the third accused has assaulted his wife(deceased) on her chest.

14. Further, the P.W.4 Thiru.Gajendran, Village Administrative Officer has admitted that in the Ex.P.5 Athatchi, there are corrections made and the said corrections have been made in another ink pen and he has also admitted in his cross examination that when the said Athatchi has been prepared in the presence of the said witness, namely, the P.W.4, he has not seen the said corrections in the said Athatchi. Further, the P.W.4 has admitted in his cross examination that the police have already obtained the confession statement from the third accused and thereafter only, he has gone there and the police have obtained his signature and at that time of putting his signature in the said Athatchi, the Inspector of Police has not been seen and only the writer has been seen by him and he has signed in the said confession statement, in the presence of the writer only. Further, the P.W.9 Dr.Senthilkumar has admitted in his cross examination that the injuries, pointed out in the Ex.P.13, namely, the contusion injury could not be caused by the M.O.1 to M.O.3 weapons and the police have not enquired him, by showing the said material objects and also, the police have not obtained any opinion, by showing the said material objects, to him and the fourth injury, pointed out in the said Postmortem Certificate could not be caused by the M.O.1 Aruval. In such circumstances, it is found that the medical evidence also has not clearly established that the accused have assaulted the deceased and the P.W.2, with the said material objects, as pointed out by the prosecution. Further, the P.W.10 Dr.Duraimurugan has specifically deposed that he has issued the Accident Register as per Ex.P.14 to the P.W.2. But, he has clearly deposed that he has issued the said certificate, based upon the ward Doctor's opinion only and the X-rays have been taken for the injuries, sustained by the P.W.2 and the said X-rays have not been filed in the Court and he has also admitted that the ward Doctor's opinion has not been filed in the Court. Hence, it is found that the medical evidence is not clear to establish the alleged crime committed by the accused Nos.1 to 3. In view of the above mentioned facts and circumstances and materials on record, this Court is unable to accept the findings of the Trial Court, the Trial Court has not accessed the materials on record, in proper perspective. The Trial Court has not taken into consideration the material and detailed aspects of the present case and the documentary evidence on record, in the proper manner.

15. Further, the P.W.11 Thiru.Mangaleswaran, learned Deputy Superintendant of Police has deposed that before he has gone to the place of occurrence, no other police have gone to the place of occurrence. However, the P.W.1 and the P.W.2 have deposed in their evidences that the police have come to the place of occurrence, before the arrival of the P.W.11. Further, the P.W.11, learned Deputy Superintendant of Police has



admitted in his cross examination that the Ex.P.13 Postmortem Certificate has been received by the Judicial Magistrate Court on 15.04.2008 only and also, the Ex.P.1 complaint has been received by the Judicial Magistrate Court only on 15.04.2008. But, no explanation has been offered, for such long delay. Further, the P.W.12 Thiru.Seeralan, Inspector of Police has deposed that he has conducted investigation and finally, filed the final report on 18.06.2008, as against the accused. However, on a careful perusal of the materials available on record, it is found that the prosecution has not proved the alleged offence committed by the accused Nos.1 to 3, herein, beyond reasonable doubts. Further, the P.W.12 Inspector of Police has admitted that the witnesses have not stated that the accused Nos.1 to 4 have assaulted the deceased Sridevi, on her chest, specifically. Further, the P.W.12 has deposed that he has written the confession statement obtained from the third accused and thereafter, the P.W.4 Village Administrative Officer has signed in the confession statement. However, the P.W.4 has clearly pointed out in his deposition that he has signed only in the already written confession statement, and at the time of putting his signature in the said confession statement, the P.W.4 has not seen the Inspector of Police and he has seen only the writer and in the presence of the said writer only, the P.W.4 has signed in the said confession statement. Hence, there are material contradictions in the evidences of the said P.W.4 Village Administrative Officer and the Investigation Officer. Further, in the Ex.P.1 complaint, the P.W.1 has stated that the accused No.3 Mathiyazhagan has assaulted on the right side of the chest of the deceased Sridevi, with M.O.1 Sword. However, in the testimony, the P.W.1 has not deposed anything about the accused No.3 and he has also specifically pointed out in his deposition that he has not seen the accused No.3 in the scene of occurrence. Hence, it is found that there are vital discrepancies in the details given in the Ex.P.1 complaint made by the P.W.1 and the deposition given by the P.W.1. Further, in the Ex.P.1 complaint itself, the P.W.1 has stated that the accused have caused brutal assault and due to the said reasons, the wife of P.W.1 has been murdered. However, the P.W.1 has not deposed about the full and correct details about the murder caused by them and also, about the retaliatory attack caused by the accused on the family members of the P.W.1. The P.W.1 has lodged the Ex.P.1 complaint to the police, on 13.04.2008 at 20 hours and the learned Judicial Magistrate has received Ex.P.7 First Information Report only on 14.04.2008 at 3.45 a.m. In the Ex.P.14 Accident Register also, the P.W.2 has deposed that on 13.04.2008 at 9.00 p.m., four known persons have assaulted her at around 7.20 p.m., at Vellankulam. However, the prosecution has not established that the accused only have caused the said brutal assault, as pointed out in the Ex.P.15 Rough Sketch, in the scene of occurrence. Further, the P.W.1 himself has been treated as hostile witness, as he has not supported the case of the prosecution, in full.

16. Further, it is useful to refer the following Judgments, submitted by Mr. Velan, learned counsel appearing for the accused No.3:-

i) In the case reported in **(1994) 4 SCC 549 (Marwadi Kishor Parmanand and Another V. State of Gujarat)**, it is precisely held as follows:-

<https://hcservices.ecourts.gov.in/hcservices/> *"Generally speaking, oral testimony may be classified into three categories, namely, (1) wholly reliable, (2) wholly unreliable,*



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and (3) neither wholly reliable nor wholly unreliable. So far as the first category of proof is concerned, the Courts have no difficulty in coming to its conclusion either way, that is to say it may convict or may acquit on the testimony of the single witness, if his testimony is found to be above approach or suspicion of interestedness, incompetence or subordination. In the case of second category of the witness, the Court has equally no difficulty in coming to the conclusion. But in the third category of cases, the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. Most often there are situations where only a single person is available to give evidence in respect of a disputed fact. Naturally in such a situation the Court has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony."

ii) Also, in the case reported in **1957 SCR 981: AIR 1957 SC 614 : (1957) Cri LJ 1000, (Vadivelu Thevar V. State of Madras)**, it is clearly observed as follows:-

"The first question which the Court has to consider in a case like this, is whether the accused has been proved, to the satisfaction of the Court, to have committed the crime."

In the present case also, it is found that the evidences of the prosecution witnesses, materials available on record and exhibits are not dependable, reliable and free from all doubts, so as to accept the case of the prosecution that the accused Nos.1 to 3 have committed the brutal assault.

iii) Further, in the case reported in **(2013) 3 MLJ (Cr1) 6, (Suresh V. State of Tamil Nadu)**, submitted on behalf of the accused Nos.1 and 2, by the learned counsel Mr.S.M.A.Jinnah, it is significantly held as follows:-

"There are lot of contradictions between the witnesses. When there are such contradictions, at least, if there is no doubt regarding the First Information Report, the grain can be separated from the chaff and based on the same, conviction can be sustained. But in this case, admittedly, the earliest information has been suppressed. In view of all the above facts



and circumstances, Court find it difficult to accept the case of the prosecution and to sustain the conviction. Hence, this Court hold that the prosecution has failed to prove the case beyond all reasonable doubts."

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In the case on hand also, it is found that there lot of contradictions between the prosecution witnesses, exhibits and material objects, as mentioned above and the prosecution has failed to prove the case, beyond reasonable doubts. Further, the prosecution case is based on the evidences of the highly interested witnesses and their presence at the scene of occurrence is also doubtful. Further, the witnesses are making the above mentioned improvements regarding nature of weapon used and also, about the occurrence, as pointed out by the prosecution. In the circumstances, it is highly unsafe to convict the appellants in the present appeal. Furthermore, no cogent evidence, to connect accused, to the crime has been established and the prosecution has miserably failed to establish its case, beyond reasonable doubts. Further, it is well settled law that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. Further, no reliable, trustworthy and credible witnesses have been examined by the prosecution before the Court, in order to establish the above mentioned case of the prosecution, as against the appellants herein.

17. In view of the above discussion, this Court has no hesitation to hold that the prosecution has not established the guilt of the appellants 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 appellants are entitled to get the benefit of such doubts. Thus, it is found that the prosecution has failed to prove the case beyond all reasonable doubts and the appellants are entitled to get acquittal. For the above mentioned reasons, it is held that the Lower Court has not appreciated the materials available on record, in proper perspective and thus, the points are answered, accordingly.

18. **In the result**, these Criminal Appeals are allowed and the conviction and sentence imposed on the file of the learned Sessions Judge, Sivagangai, by Judgment dated 07.07.2011 delivered in S.C.No.39 of 2009 is set aside and the appellant/accused No.3/ Mathiazhagan in CrI.A(MD)No.204 of 2011 and also the appellant/accused No.1/Ayyanar and the appellant/accused No.2/Muthirulu in CrI.A(MD)No.229 of 2011 are acquitted. The bail bond, if any, executed by them shall stand cancelled and the fine amount, if any, paid by them shall be repaid to them.

Sd/-

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar



To

1. The Principal and District Sessions Judge, Sivagangai District
2. The Sessions Judge, Sivagangai.
3. Inspector of Police, Tiruppachethi Police Station, Sivagangai District.
4. The District Munsif cum Judicial Magistrate, Manamadurai.
5. -DO- THRO' the Chief Judicial Magistrate, Sivagangai District.
6. The Superintendent, Central Prison, Madurai.
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
8. The District Collector, Sivagangai District.
9. The Director General of Police, Vepery, Chennai-7.

PRE-DELIVERY JUDGMENT

MADE IN

Crl.A. (MD) No. 204 of 2011

AND

CRL.A. (MD) No. 229 of 2011

19.02.2016

pmu

SH/SKS-RR/SAR-I:26.02.2016:14P/10C