

Bail Slip

Appellant /Accused A2 & A3 viz Subash and Ramya were released on bail as per the order of this Hon'ble Court dated 05.01.2016 & 06.01.2016 and made in CrI MP(MD)1 to 2015 in CrI.A(MD)No.200 of 2015 and CrI MP(MD) 1 of 2015 in CrI.MP(MD) No.365 of 2015 respectively.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.07.2017

Delivered on : 13.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Criminal Appeal (MD) Nos.200, 280 and 365 of 2015

Subash	.. Appellant in CrI.A.(MD) No.200 of 2015/A2
Nadimuthu	.. Appellant in CrI.A.(MD) No.280 of 2015/A1
Ramya	.. Appellant in CrI.A.(MD) No.365 of 2015/A3

vs.

State,
Rep. by Inspector of Police,
Thiruchitrambalam Police Station,
Thanjavur District.
all the (Crime No.109/2012)

.. Respondent/Complainant in
appeals

Criminal appeals are filed under Section 374(2) of Criminal Procedure Code against the judgment and conviction dated 04.08.2015, by the learned Principal Sessions Judge, Thanjavur in S.C.No.288 of 2013.

For Appellant
in CrI.A. (MD)No.200 of 2015

: Mr.M.Karunanithi

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For Appellant
in CrI.A. (MD)No.280 of 2015

: Mr.R.P.Ramachandran



For Appellant
in CrI.A. (MD)No.365 of 2015

: Mr.R.Venkatesan

For respondent in all the
appeals

: Mr.R.Ramachandran
Additional Public Prosecutor

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COMMON JUDGMENT

**(Judgment of the Court was delivered by
M.M.SUNDRESH, J)**

The appellants stood charged, convicted and sentenced by the trial Court in S.C.No.288 of 2013 for the offence under Sections 120-B, 364, 302 and 201 I.P.C. (A1), 364, 302 r/w 109 and 201 I.P.C. (A2) and 120-B, and 302 r/w 109 I.P.C. (A3) and hence the present appeals.

2.The case as seen by the prosecution:

The deceased chandrasekar was the husband of A3. They were working under A1 functioning as Maestri. A2 was also working under A1. The deceased suspected the fidelity of A3 in having illicit relationship with A1. Due to the harassment meted out at the hands of the deceased, A3 asked A1 to finish the deceased. On 10.09.2012 at about 6.00 p.m. the deceased was dropped at his home by A1. The deceased was stated to be under the influence of alcohol. A1 and A3 talking to each other overheard by P.Ws.2 and 3. A3 has told A1 to take away the life of the deceased. After about 1 1/2 hours, A1 came with A2 and took the deceased. It was also seen by P.Ws.2 and 3. In a bike all the three were seen by P.Ws.6 to 8 at about 8.00 a.m. Thereafter, A1 and A2 were seen in the same bike at about 9.00 p.m. by P.Ws.8 and 9. After search, P.W.1, who is the father of the deceased made a complaint Ex.P.1 on 12.09.2012 to P.W.27 is the Inspector of Police, who received the complaint and registered F.I.R. Ex.P.20. A1 was arrested at about 9.00 a.m. His confession statement has been recorded about 9.30 a.m. Based upon his confession statement, the body of the deceased along with material objects were recovered. Thereafter, the alteration report was prepared and sent to the Court as well as the revenue and higher officials. After the said exercise, Ex.P.7 Observation Mahazar was prepared. Recovery has been made under Exs.P.5 and P.8 at about 12.45 p.m. Finally, on completing the investigation, P.W.27 laid the charge sheet against the accused under Sections 120-B, 364, 302, 201 r/w 34 and 109 I.P.C.

3.Prosecution Witnesses:

(i) P.W.1 is the father of the deceased and also the author of the complaint given at about 6.30 a.m. on 12.09.2012 and the F.I.R. Ex.P.20 was registered by P.W.27. P.W.1 in his evidence has stated that he searched for the deceased on 10.09.2012 and



11.09.2012, but could not trace him. He was informed by one Ganesan S/o. Chinnaiyan and one Paneerselvam that the deceased was taken in a bike by A1. A complaint was given by him for man missing. Thereafter, he was informed by the local people that the deceased was buried near the "40 Kan Palam".

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(ii) P.W.2 is the brother of the deceased. According to him, he has seen the deceased along with A1 at about 6.00 p.m., dropping him at his residence. The deceased was in a drunken mood. He viewed through the window of the house and overheard the conversation between A1 and A3. He also saw A1 and A2 taking the deceased thereafter between 1 to 2 hours. He asked P.W.1 to give a complaint after making search on 10.09.2012 and 11.09.2012. He speaks about the arrest of A1 and police taking him and P.W.1 to "Agni" river. He also says in the cross examination that he along with the villagers brought A1 to the police station. He also makes another submission that the complaint was given on 11.09.2012.

(iii) P.W.3 is the daughter of the deceased and A3, aged about 9 years. She speaks about the illicit relationship between A1 and A3, which was made known to her through the villagers. She further says that she overheard her mother (A3) talking to A1 to do away with her father (deceased) in a cellphone. Her presence is not spoken to by P.W.2. She was accompanied by P.W.4 her aunt at the time of trial.

(iv) P.W.4 is the sister-in-law of the deceased. She talks about the strained relationship between the deceased and A3. She also speaks about the search made on 10.09.2012 and 11.09.2012 for the deceased by P.Ws.1 and 2.

(v) P.W.5 is also a relative of the deceased. She speaks about the fight that took place between the accused 1 and 3.

(vi) P.W.6 is the one who has seen the deceased along with A1 and A2 at 8.00 p.m. Incidentally, he is the brother-in-law of the deceased.

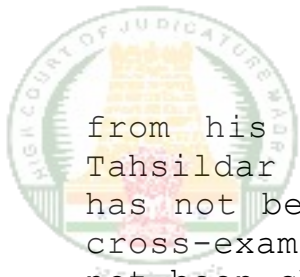
(vii) P.W.7 is the another brother-in-law of the deceased, who speaks on the same line.

(viii) P.W.8 is the relative of the deceased, who speaks about A1 and A2 travelling along with the deceased at about 8.30 p.m. and thereafter at about 9.00 p.m. A1 and A2 alone came without the deceased.

(ix) P.W.10 is the Village Administrative Officer, who has signed the confession statement Ex.P.4 as well as the Observation Mahazar Ex.P.3.

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(x) P.W.11 is the Village Administrative Officer. He says that at about 8.00 a.m. on 12.09.2012, he received a telephone call



from his Assistant, P.W.13, thereafter, he informed it to the Tahsildar and went to the spot. Though this part of the evidence has not been cross-examined, he was treated as hostile and in the cross-examination by the prosecution, the aforesaid statement has not been challenged.

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(xi) P.W.13 is the Assistant of P.W.11. Even in his Chief-Examination, he stated that he has informed P.W.11 after getting the information about the presence of the body. He further stated that when he reached the place along with P.W.11, Village Administrative Officer, the police was there. In his cross-examination he says that he got information about 9.00 a.m. and he was present in the scene of occurrence from 10.00 a.m. to 7.30 p.m.

(xii) P.W.23 is the doctor, who conducted the postmortem. He states that the body was in a highly decomposing stage. It was completely covered by flies and part of the nose was found eaten up. The skin in the entire body got peeled off. In his cross examination, he says that though it would occur through scrapping by maggots, it is not correct to state that death had taken 6 days earlier, despite the fact that body was fully decomposed. Thus, he gave opinion that the deceased would have died 36 to 48 hours prior to postmortem, which was done about 4.15 p.m. on 12.09.2012.

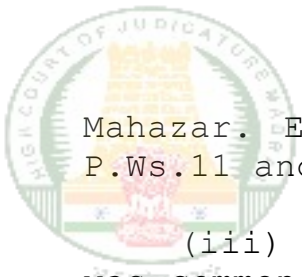
(xiii) P.W.27 is the investigation officer, who registered the complaint of P.W.1. He states that after registering the F.I.R. he enquired A1 at 9.00 a.m. Thereafter, obtained the confession statement in the presence of P.W.11 and his Assistant P.W.13 at 9.30 a.m. He altered the F.I.R. at 10.30 a.m. and sent the Alteration Report Ex.P.19 to the Judicial Magistrate through P.W.26. Thereafter, the Alteration Report Ex.A19 was sent to Tahsildar. After doing the above said exercise, at about 11.00 a.m. went to the scene of occurrence, where the body was found and prepared the observation mahazaar under Ex.P.7. He also states that he went along with P.W.1 to Inspect the scene of occurrence which is contrary to the statement made by him. In the course of cross-examination, he further states that he found maggots in the body of the deceased. He accepted the fact that Ex.P.20 F.I.R. and Ex.P.19 Alteration Report were sent to the Court together at about 8.45 p.m.

4.Prosecution Documents:

(i) Ex.P.1 is the complaint. It was given by P.W.1 at 6.30 a.m. to P.W.27. It specifically states seeing of the deceased having left along with A1 and A2 by one Ganesan S/o.Chinnayan and Paneer S/o. Palayan to P.W.1. It is further stated that P.W.1 suspected the role of A1.

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(ii) Ex.P.2 is the admitted portion of the confession statement leading to recovery given by A1. Ex.P.3 is Observation



Mahazar. Ex.P.5, 6, 8 and 9 are the seizure Mahazars signed by P.Ws.11 and 13.

(iii) Ex.P.15 is the postmortem certificate, as per which it was commenced at 4.15 p.m. on 12.09.2012. In clear terms it speaks about the decomposed state of the body, the abdomen, thorax and internal organs. There was a disfigurement of the nose having eaten up. The body was found facing the earth completely covered by flies.

(iv) Ex.P.18 is the inquest report did under Section 174 Cr.P.C. This report also speaks about presence of Ganesan and Paneerselvam as stated by P.W.1 and P.W.17.

(v) Ex.P.19 is the Alteration Report. This document states that A1 was arrested at 9.00 a.m. and statement was given by him voluntarily through his confession at about 10.30 a.m.

5. Based on the above materials, the Trial Court framed charges as detailed earlier in this judgment. During the trial on the side of the prosecution, as many as 27 witnesses were examined and 22 documents were exhibited, besides 7 Material Objects. When the above incriminating materials were put to the accused under Section 313 Cr.P.C, they denied the same as false.

6. The trial Court placing reliance upon the evidence of P.Ws.1 to 3, 6 and 7 coupled with the evidence of P.W.23, who is the doctor, who conducted postmortem held that the charges are proved. Reliance has been made on the recovery in pursuant to the confession statement made by A1. Hence, challenging the same these appellants are before us.

7. The learned counsel for the appellants would submit that the factors required to prove the charges framed based upon the circumstantial evidences are not satisfied. There is a serious doubt about the date of occurrence. All the witnesses are close relatives of the deceased. There are material contradictions between the evidence adduced by the prosecution witnesses. There is delay in F.I.R. reaching the Court. Two material witnesses, namely, Ganesan and Paneerselvam though mentioned in the F.I.R. and noted in the inquest report have not been examined. The statements of P.Ws.11 and 13 have not been taken into consideration. Medical evidence available would disprove the case of the prosecution. There is no material for implicating A2 and A3. The evidence of P.W.3 is very shaky. Even according to the prosecution, A2 merely accompanied A1. Hence, the appellants are entitled for the benefit of doubt.

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8. The learned Additional Public Prosecutor would submit that the motive has been established. P.Ws.1 to 5 speaks about the



suspicion on the part of the deceased and the relationship between A1 and A3. Witnesses have also spoken about the presence of the deceased with A1 and A2. Recovery has been made as per law. P.W.27 has stated clearly about the motive as well as the involvement. Hence, no interference is required.

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9. We have considered the rival submissions and perused the evidence available on record.

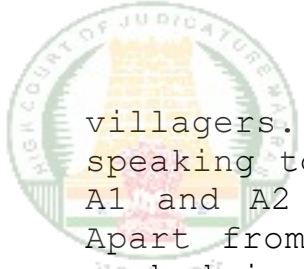
10. Now, we have to see as to whether the prosecution has proved motive, "last seen" and the recovery under Section 27 of the Indian Evidence Act through the evidence produced.

11. P.W.1 did not speak about the information of the deceased having been found with A1 and A2. This was told to him by Ganesan and Paneerselvam. They have not been examined though the inquest report and P.W.27 evidence speak about it. Further more, P.W.1 says that he went to the spot after getting information from the villagers, which again contradicts P.W.27. Strangely he did not speak about the information given by his son, namely, P.W.2 who is stated to have seen the deceased leaving with A1 and A2. Though P.W.1 was searching for the deceased from 10.09.2012 onwards, he has not been informed by any one of the family members including P.Ws.2, 3, 6 and 7. On the contrary, he said that he was searching the deceased. Therefore, we are unable to believe the evidence of P.W.1.

12. P.W.2 is the brother of the deceased. He has overheard the conversation between A1 and A3. Strangely, though he searched for the deceased from 10.09.2012 onwards he did not make an enquiry with A1, this is for the reason he has seen the deceased travelling along with A1 and A2. He has also stated that it is he who asked his father to lodge the complaint. But the information which he speaks about, has never been told at the time of registering Ex.P.1. There are contradictions between the statements of P.W.1 and P.W.2 as according to him he along with P.W.1 were taken to the place of occurrence by the police. He further stated that he along with P.W.1 and the villagers brought A1 to the police station. This is contrary to the very statement of P.W.27, who speaks about the arrest of A1 in a public place in the presence of P.W.10. In the cross-examination, he further stated that a complaint was given by him on 11.09.2012, though actually the complaint was given on 12.09.2012. Though P.W.2 states that he did not enter into the house of the deceased, since he was under the influence of alcohol, the postmortem report did not indicate the same. The above conclusion lead us to draw the presumption qua "human conduct" against P.W.2. Hence, for the above reasons, we are unable to believe the evidence of P.W.2.

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13. P.W.3 is aged about 9 years. She has deposed that she came to know about the murder committed by A1 and A2 through the



villagers. Contrary to the statement of P.W.2, she overheard A1 speaking to A3 to finish off deceased. According to her, thereafter A1 and A2 came to their house and took the deceased in a bike. Apart from the contradictions, though A3 is stated to have been spoked in a cellphone the same has not been recovered and there was no investigation on that account. It is to be noted that she was accompanied by P.W.4, who is the sister-in-law of the deceased. Curiously P.W.2 has not spoken about the presence of P.W.3. Therefore, we are of the view that P.W.3 being the child witness living with the relative of the deceased after his demise her testimony does not inspire confidence.

14. Depending upon the facts, a child witness may require corroboration, unless it inspires confidence of the Court. Such an evidence must be evaluated, as the child witness is accessible to tutoring. We are of the considered view that the mind of P.W.3 has already been coloured from the information she has received from others which is also strengthened by the fact that she was accompanied by P.W.4, who stated in chief examination in clear terms that the deceased was murdered only at the instance of A3. We quote with profit the legal proposition on the evidence of child witness, the following decision in support of our conclusion:

(i) ***State of M.P. v. Ramesh*** reported in **(2011) 4 SCC 786**.

"14. In view of the above, the law on the issue can be summarized to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the Court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition."

(ii) ***K. Vengateshwarlu v. State of A.P.*** reported in **(2012) 8 Supreme Court cases 73**.

"9. Several child witnesses have been relied upon in this case. The evidence of a child witness has to be subjected to closest scrutiny and can be accepted only if the court comes to the conclusion that the child understands the question put to him and he is capable of giving rational answers (see Section 118 of the Evidence Act). A child witness, by reason of his tender age, is a pliable witness. He can be tutored easily either by



threat, coercion or inducement. Therefore, the court must be satisfied that the attendant circumstances do not show that the child was acting under the influence of someone or was under a threat or coercion. Evidence of a child witness can be relied upon if the court, with its expertise and ability to evaluate the evidence, comes to the conclusion that the child is not tutored and his evidence has a ring of truth. It is safe and prudent to look for corroboration for the evidence of a child witness from the other evidence on record, because while giving evidence a child may give scope to his imagination and exaggerate his version or may develop cold feet and not tell the truth or may repeat what he has been asked to say not knowing the consequences of his deposition in the court. Careful evaluation of the evidence of a child witness in the background and context of other evidence on record is a must before the court decides to rely upon it."

15. P.W.6 and 7 are the brothers-in-law of the deceased. They have stated that they have seen the deceased along with A1 and A2 during the night time. Though it was dark, they saw them by light from the bike in which they were travelling. Though these two witnesses are brothers-in-law of the deceased and sons-in-law of P.W.1, they have not told anything when the search was going on, either to P.W.1 or P.W.2. The same rationale is also applies to P.W.8.

16. Coming to the evidence of P.Ws.11 and 13, P.W.11 has got information, thereafter he went to the place of occurrence along with P.W.13, being his Assistant. P.W.13 who is the Assistant to P.W.11 has also reiterated the same in his chief examination. He says that he went to the spot along with P.W.11 after getting information about the presence of the body. It is probable that body was found lying on the ground and not buried. In his cross-examination he has stated that he got the information about the body lying. He was present in the spot from 10.00 a.m. to 7.30 p.m. From the above, we are of the view that P.Ws.11 and 13 have got prior information. It is to be seen that enquiry with the accused is said to have been made at 9.00 a.m. A1. The confession statement was recorded as per P.W.10 at 10.30 a.m. If that is a case, one wonders as to how P.Ws.11 and 13 would be in spot as they went there at 10.00 a.m. after getting information at 9.00 a.m. Hence, on analyzing the evidence of P.Ws.11 and 13 we are of the view that the entire case of the prosecution starting from the registration of F.I.R., confession leading to arrest, recovery among other things appears to be not correct and acceptable.

<https://hcservices.courts.gov.in/HsService/> is the doctor, who conducted postmortem. On a perusal of Ex.P.15 postmortem certificate along with the statements made we find that it does not inspire confidence. The



relevant English portion of Ex.P.15 with translation is as follows:

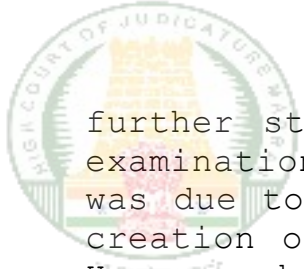
"Body is highly decomposed. .. Entire body was found covered with flies. Nose was found eaten up. .. On opening, the abdomen & thorax, all internal organs intact and highly decomposed, stomach is empty on opening the skull no fracture."

From the above, it is very clear that the body was in a highly decomposed stage. The deceased was missing from 8.30 p.m. in the month of September, 2012. This was a night time with the winter setting in. The body was also found facing the earth. As per the case of the prosecution and postmortem it was found buried. The postmortem was done at 4.15 p.m. on 12.09.2012. The entire body was covered with flies. There was disfigurement of the nose due to the erosion caused by the maggots. Almost the entire skin of the body was peeled off. That is the reason why the postmortem was done on the spot itself. There were two intervening nights. The period of death and recovery of the body would be less than 2 days. It was stated to have buried under the river. There was no external injuries involved. When a body is buried, there cannot be any fly covering it. These factors would clearly indicate that it may create serious doubts and suspicion with reference to the date of death.

18. P.W.27 in his evidence says that the confession has been recorded at 9.30 a.m. However, Ex.P.19 as discussed above states that it has been recorded at 10.30 a.m. Thereafter, he prepared alteration report and sent Ex.P.19 through P.W.26 at about 10.30 a.m. Thus, the statement made by him that confession statement made at 10.30 a.m. is not correct as has been recorded by Ex.P.19 which states the time as 10.30 a.m. Be that as it may, he has not chosen to examine the two persons mentioned in the F.I.R., by name, Ganesan and Paneerselvam, despite mentioning them in the inquest report. Though he has denied that Ex.P.7 Observation Mahazar along with the sketch under Ex.P.22 has not been prepared on the spot, P.W.12, who affixed his signature to Ex.P.7 has stated that he has signed the same before police station. This statement on enquiry and arrest is contrary to that of P.W.2. Thus, we are unable lend credence to the evidence of P.W.27.

19. Law is settled, as between the ocular and medical evidence the former would have the primacy. But when it comes to the time, there has to be some synchronizing factors. Now in the case on hand, there is a serious doubt over the timing as could be seen from evidence by the prosecution witnesses with the medical report available. From the postmortem certificate it appears the death would not have occurred at 9.00 p.m. as projected by the

19. P.W.23 in his evidence has stated that there was no external injuries. He has deposed that the body was in a highly decomposed stage with the entire skin removed from it. He has

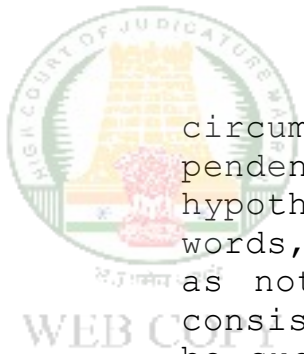


further stated that the nose was partly eaten up. In his cross-examination he has stated that disfigurement of part of the body was due to maggots. He also says in the cross-examination for the creation of maggots, it will take 6 days from the date of death. However, he deposed that it is not correct to state that the death would have occurred beyond 36 to 48 hours. Such a statement is not in consonance with the report given by him. As discussed above, it was not a summer. Therefore, a body would take more time to decompose. According to the prosecution the body was buried. It is not known how the nose is partly eaten and the entire body covered with flies, with entire skin having been found removed. The body was so decomposed. The postmortem was done then and there itself. There was no natural orifices leading to the quick decomposition as the body was facing earth. Though in the cross-examination P.W.23 states that maggots are not formed, such statement is contrary to the evidence of P.W.27, who admits the presence of maggots. For maggots to set in it would take 8 to 24 hours in hot weather. Therefore, we find it very difficult to accept the evidence of P.W.23 with respect to the time of death as well as the factum of the body being buried.

20. We are quite aware of the fact that we are dealing with the case on circumstantial evidence. Such an evidence will have to be clear and cogent. Facts leading to such evidence will have to be proved in a clear and cogent manner. Only on such satisfaction, the rigour of Section 27 of the Evidence Act, which is exception to Section 25 read with 106 can be pressed into service. After all, a discovery of fact under Section 27 is only a relevant fact to be seen on the context of a particular case. When once it is held that a discovery of fact under Section 27 has not been proved coupled with the circumstances leading to the chain of events then in the absence of such initial onus being discharged, shifting the onus to accused would not happen. Such circumstances must lead to the irresistible conclusion that the accused alone is the perpetrator of the crime being conclusive in nature. Suspicion in such eventuality must swing from "may be" to "must be", thus giving a state of certainty. A fact under Section 27 of the Evidence Act has to be read with the others prior and after forming a chain. We quote with profit the following decisions of the Apex Court:

(i) **Hanumant Govind Nargundkar v. State of M.P.** reported in **AIR 1952 SC 343.**

"10. ... It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the



circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

(ii) In *Sharad Birdhichand Sarda v. State of Maharashtra* reported in (1984) 4 SCC 116, the five golden principles which have been stated to constitute the "panchsheel" of the proof of the case based on circumstantial evidence are:

"(i). that the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely "may be" fully established; [163D]

(ii) that the facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) that the circumstances should be of a conclusive nature and tendency;

(iv) that they should exclude every possible hypothesis except the one to be proved; and

(v) that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

(iii) ***Sucha Singh v. State of Punjab*** reported in (2001) 4 SCC 375.

"18. Learned senior counsel contended that Section 106 of the Evidence Act is not intended for the purpose of filling up the vacuum in prosecution evidence. He invited our attention to the observations made by the Privy Council in *Attygalle Vs. R* AIR 1936 PC 169, and also in *Stephen Seneviratne vs. The King* : AIR 1936 PC 289. In fact the observations contained therein were considered by this Court in an early decision authored by Vivian Bose, J, in *Shambhu Nath Mehra vs State of Ajmer*, AIR 1956 SC 404. The statement of law made by the learned Judge in the aforesaid decision has been extracted by us in *State of West Bengal vs. Mir Mohammad Omar*, 2000 (8) SCC 382. It is useful to extract a further portion of the observation made by us in the aforesaid decision:



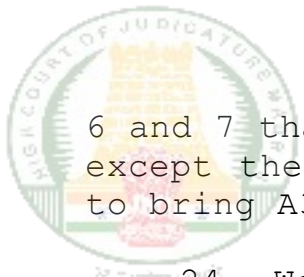
facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case."

19. We pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference."

21. Though the prosecution witnesses speak about the motive the same alone cannot be the sole factor in a case involving circumstantial evidence. After all, the first duty of the prosecution is to prove the death as envisaged by it before proceeding with the guilt of the accused. From the discussion made above, we are of the view that the witnesses deposed on behalf of the prosecution and the documents marked are not sufficient enough to prove the charges levelled against the appellants.

22. Thus, on a combined reading of the entire evidence available, we are of the view that there are not only doubts but also improbabilities which are inherent, apart from infirmities. Though the witnesses who are relatives to the deceased cannot be called as an interested witness, more scrutiny is required by the Courts while dealing with it. In the case on hand, apart from the fact that most of the witnesses are close relatives of the deceased, their statements had not inspired the confidence of this Court as discussed above. From the evidence analysed we are of the view the case as projected by the prosecution itself in serious doubt. Once that is the position, the entire case of the prosecution built thereafter would be of a weak edifice and therefore, cannot be approved.

<https://hcservices.courts.gov.in/hcservices/> 23. The discrepancy in the evidence and the case projected by the prosecution give way to more unanswered questions. As against A2 there is absolutely no motive except the statements of P.Ws.2,



6 and 7 that he was seen along with the deceased and A1. Similarly except the statement of P.Ws.2 and 3 we do not find any material to bring A3 within the ambit of charges framed.

24. We have thus discussed the evidence of P.Ws.11 and 13. These evidence seriously impair the prosecution. Though P.W.11 has turned hostile, the statement made with respect to the prior information is in consistent with the evidence of P.W.13. Both have stated the presence of each other as against the case of the prosecution. Therefore, there is a clear corroboration available. In this regard A useful reference can be made to the recent judgment of the Hon'ble Supreme Court in **Arjun v. State of Chhattisgarh (2017) 3 SCC 247** with the following paragraphs be apposite:

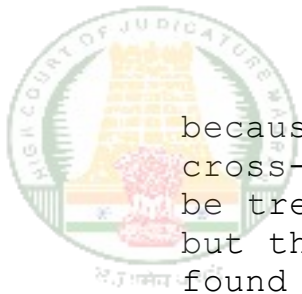
"15. Though the eye witnesses PWs 1, 2, 7 and 8 were treated as hostile by the prosecution, their testimony insofar as the place of occurrence and presence of accused in the place of the incident and their questioning as to the cutting of the trees and two accused surrounding the deceased with weapons is not disputed. The trial court as well as the High Court rightly relied upon the evidence of PWs 1, 2, 7 and 8 to the above said extent of corroborating the evidence of PW-6 Shivprasad. Merely because the witnesses have turned hostile in part their evidence cannot be rejected in toto. The evidence of such witnesses cannot be treated as effaced altogether but the same can be accepted to the extent that their version is found to be dependable and the court shall examine more cautiously to find out as to what extent he has supported the case of the prosecution.

16. In Paramjeet Singh vs. State of Uttarakhand (2010) 10 SCC 439, it was held as under:-

"16. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness; normally, it should look for corroboration to his testimony. (Vide State of Rajasthan v. Bhawani (2003) 7 SCC 291.)

17. This Court while deciding the issue in Radha Mohan Singh v. State of U.P. (2006) 2 SCC 450 observed as under: (SCC p. 457, para 7)

<https://hcservices.ecourts.gov.in/hcservices/> is well settled that the evidence of a prosecution witness cannot be rejected in toto merely



because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof."

18. In Mahesh v. State of Maharashtra (2008) 13 SCC 271, this Court considered the value of the deposition of a hostile witness and held as under: (SCC p. 289, para 49)

"49. ... If PW 1 the maker of the complaint has chosen not to corroborate his earlier statement made in the complaint and recorded during investigation, the conduct of such a witness for no plausible and tenable reasons pointed out on record, will give rise to doubt the testimony of the investigating officer who had sincerely and honestly conducted the entire investigation of the case. In these circumstances, we are of the view that PW 1 has tried to conceal the material truth from the Court with the sole purpose of shielding and protecting the appellant for reasons best known to the witness and therefore, no benefit could be given to the appellant for unfavourable conduct of this witness to the prosecution."

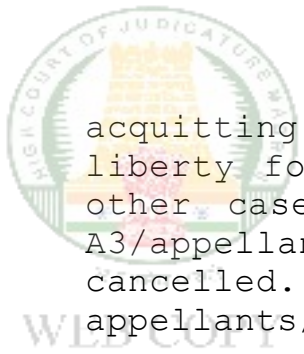
19. In Rajendra v. State of U.P. (2009) 13 SCC 480, this Court observed that merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. This Court reiterated a similar view in Govindappa v. State of Karnataka (2010) 6 SCC 533 observing that the deposition of a hostile witness can be relied upon at least up to the extent he supported the case of the prosecution.

20. In view of the above, it is evident that the evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution."

The same view is reiterated in Mrinal Das and Ors. vs. State of Tripura (2011) 9 SCC 479 in para 67 and also in Khachar Dipu alias Dilipbhai Nakubhai vs. State of Gujarat (2013) 4 SCC 322 in para 17."

Thus, on a thorough scrutiny, we have no hesitation in holding that the prosecution has not proved the charges to the satisfaction of the Court.

25. Accordingly, all the appeals are allowed and the order of conviction and sentence passed by the learned Principal Sessions Judge, Thanjavur made in S.C.No.288 of 2013 dated 04.08.2015 are set aside. The appellants in CrI.A.(MD) Nos.280, 200 and 365 of 2015/A1 are acquitted of all the charges. The appellant in CrI.A.(MD) No.280 of 2015/A1 is now undergoing sentence in the Central Prison, Thiruchirapalli. In view of this judgement



acquitting him, the jail authorities are directed to set him at liberty forthwith, if he is not required in connection with any other case or proceedings. The bail bonds executed by A2 and A3/appellants in Crl.A.(MD) Nos.200 and 365 of 2015 stand cancelled. Fine amount, if any, paid shall be refunded to the appellants/A1 to A3.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Pattukkottai.
2. - Do -Thro The Chief Judicial Magistrate,
Thanjavur.
- 3.The Principal Sessions Judge,
Thanjavur.
- 4.The Superintendent of Prison,
Central Prison,
Tiruchirapalli.
- 5.The Inspector of Police,
Thiruchitrambalam Police Station,
Thanjavur District.
- 6.The District Collector, Thanjavur.
- 7.The Director General of Police, Mylapure.
- 8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M.Karunanithi, Advocate Sr.No.65491

SJ

VB/MR/KKR/27.07.2017/15P/10C