



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2017

Date of Reserving the Judgment	Date of Pronouncing the Judgment
02.11.2017	22.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
Crl.A. (MD) No.121 of 2017

Karthikeyan

... Appellant / Accused

-vs-

State, rep.by
The Inspector of Police
Perungudi Police Station
Madurai (Cr.No.239 of 2013)
Madurai District

... Respondent / Complainant

Criminal appeal is filed under Section 374(2) Cr.P.C., to call for the records and set aside the order of conviction and sentence passed in S.C.No.79 of 2015, dated 26.04.2016, on the file of the learned I Additional Sessions District Judge, Madurai.

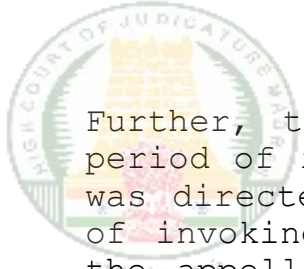
For Appellant : Mr.P.Aandiraj
For Respondent : Mr.C.Ramesh
Addl. Public Prosecutor

J U D G M E N T

A.D.JAGADISH CHANDIRA, J.,

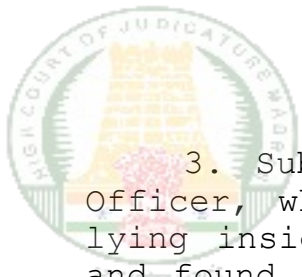
This criminal appeal has been directed by the appellant / accused challenging the Judgment, dated 26.04.2016, passed in S.C.No.79 of 2015, by the learned I Additional Sessions District Judge, Madurai, convicting and sentencing him as follows:

Conviction	Sentence
U/S. 302 I.P.C.	Life Imprisonment + Fine of Rs.5,000/-, i/d 1 Year S.I.
U/S. 201 I.P.C.	5 Years R.I. + Fine of Rs.2,000/-, i/d 1 Year S.I.



Further, the sentences were directed to run concurrently and the period of imprisonment already undergone by the appellant / accused was directed to be set off under Section 428 Cr.P.C., in the event of invoking the provisions of Section 433-A Cr.P.C. Furthermore, the appellant / accused was directed to pay a sum of Rs.50,000/- towards compensation to the minor children of the deceased Lakshmi, wife of Bakkianathan, through their legal guardian under Section 357 Cr.P.C., and the State Government was also recommended, under Section 357A(3) Cr.P.C., to award a sum of Rs.3,00,000/- to the minor children of the deceased Lakshmi through their legal guardian for their rehabilitation.

2. The case of the prosecution in brief is that the deceased Lakshmi is the wife of Bakkianathan and a resident of Chinnalampatti, Dindigul District. Her husband died due to illness. Subsequent to the death of her husband, she started indulging in prostitution to manage her family. The appellant / accused is the son of Muthukamatchi and a resident of Irukankudi, Virudhunagar District and was employed as a lorry driver. The deceased is a distant relative of the appellant / accused and the relationship between them was in the form of brother -in-law and sister-in-law. The appellant / accused had met the deceased when he had gone to Murugapatti to see his relatives and subsequently they developed illicit relationship between them. When such being so, the deceased, in order to carry on her trade, had shifted her residence to Makkaran Parai from Chinnalampatti. At that time, the appellant / accused and the deceased used to meet near Karuppu Kovil and in the orchard of Nandhu Patel during day and night time. When the appellant / accused and the deceased were together, the deceased used to get calls from other male persons and the appellant / accused had been warning her with regard to the same. At that time, the deceased informed the appellant / accused that she needs more money and therefore, she had been continuing to meet other male persons. Hence, the appellant / accused thought that the deceased behaved in an indifferent manner with him and thereby, the deceased started to avoid the appellant / accused. Therefore, the appellant / accused, who got enraged over the same, with criminal intention made a plan to murder the deceased and accordingly, on 14.09.2013 at about 20.00 hours, telling her that he was having money with him took the deceased from Andipatti Bungalow to Mattuthavani Bus Stop and from there, they reached to Puliyamaram Bus Stop and from there, they went to their usual place of meeting i.e., Nandhu Patel Orchard, wherein, under the Manjanathu Tree and while they were conversing with each other, on 15.09.2013, at about 12.30 a.m., a wordy quarrel ensued between them and the appellant / accused, who already nurtured in the said quarrel, hatred to kill the deceased, at about 01.00 a.m., took a wooden log, attacked and hit the deceased on the backside of the head and repeatedly beaten on the chest of the deceased and caused her death. Thereafter, in order to cover-up the death,, the appellant / accused took the body of the deceased and pushed it inside a dry Well, which was a 50 feet deep Well.



3. Subsequently, on the same day, the Village Administrative Officer, who received the telephonic information about a dead body lying inside the well from P.W.2, went to the place of occurrence and found the body of the deceased and immediately, he went to the respondent - Police and lodged a complaint and the respondent - Police, based on the said complaint, had registered a case in Crime No.239 of 2013 and after a thorough investigation into the matter, filed a final report on 12.01.2015 and the same had been taken on file by the learned Judicial Magistrate No.VI, Madurai, in P.R.C.No.1 of 2015, who in turn committed the same to the file of the learned Principal District Judge, Madurai, as the said case was exclusively triable by the Court of Sessions and thereafter, the said case was made over to the file of the learned I Additional District and Sessions Judge, Madurai.

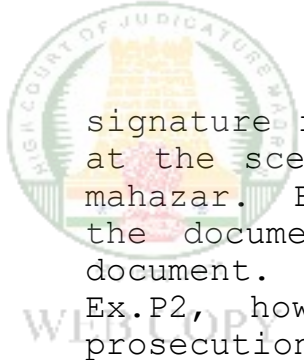
4. Subsequently, charges were framed under Sections 302 and 201 I.P.C., against the appellant / accused and when the appellant / accused was asked to explain about the charges framed against him, he had denied the charges and sought for trial to prove his case and accordingly, trial was conducted.

5. During the course of trial, on the side of the prosecution, P.Ws.1 to 13 were examined and Exs.P1 to P18 and M.Os.1 and 2 were marked and when the incriminating materials and circumstances were put to the appellant / accused, under Section 313 Cr.P.C., he denied the evidence of the prosecution side as false, however, no oral and documentary evidence was adduced on the side of the defence. After hearing both sides and perusing the oral and documentary evidence adduced, the learned Trial Judge, by Judgment dated 26.04.2016, found the appellant / accused guilty for the offence under Sections 302 and 201 I.P.C., and sentenced him as stated above. Challenging the said Judgment and order of conviction and sentence, the appellant / accused has preferred the present criminal appeal.

6. P.W.1 is the Village Administrative Officer and according to his deposition, he had received a call on 15.09.2013 in his mobile from P.W.2 / Singadurai and that on the information, he went to Nandu Patel Orchard, where he had seen the body of the deceased lying inside a Well in an upside down manner. A violet colour saree with blood stains was seen near the Well and a red colour chappal was seen about 50 feet from the Well. Immediately, P.W.1 had gone to Perungudi Police Station and lodged a complaint, which is marked as Ex.P1.

7. P.W.2 is the Village Assistant, who had given the intimation to P.W.1 and he had corroborated the statement of P.W.1.

8. P.W.3 is one Periathambi, who is the witness to the observation mahazar and according to him, two years prior to the date of deposition, he heard that there was a murder at Manthithoppu and he had gone there to see it and that the Police had obtained

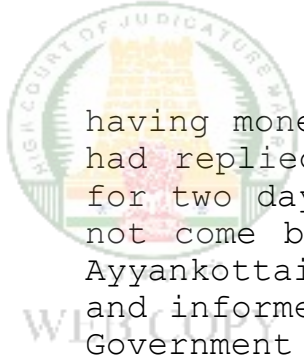


signature from him to show that the body of the deceased was found at the scene of occurrence and that he had signed the observation mahazar. But, he had deposed that he did not know why he had signed the document or that he was not aware of the contents of the document. His signature in the observation mahazar was marked as Ex.P2, however, he was declared as a hostile witness by the prosecution.

9. P.W.4 / Andi is the Watchman and according to his deposition before the Court he did not know anything about the occurrence and he did not know the accused and he had deposed that he had signed in a paper at the request of the Police. He was also declared as a hostile witness by the prosecution.

10. P.W.5 / Muthusamy is the younger brother of the deceased and according to his deposition before the Court, he had identified the accused and deposed that the appellant / accused is also related to him. According to his evidence, the deceased was residing at Andipatti Bungalow after the demise of her husband and that he heard from the neighbours of the deceased that someone was visiting the deceased and that he had scolded her in that regard. His further evidence is that he went to see the deceased on a day and on that day he had seen the appellant / accused in the house of the deceased and that he had questioned the accused and also advised both of them and that subsequently, two years prior to the deposition, he had seen his sister / deceased at Andipatti Bus Stop and when he had enquired her where she was going, she had replied to him that she was going to Madurai and went away and at that time, he had also seen the appellant / accused and when he had asked the appellant / accused, he had answered that he was also going to Madurai. The further evidence of P.W.5 is that after two days, he heard from someone that his sister was found dead and that the Police showed him a photograph and that he had identified the deceased as his sister. He further deposed that her children were staying in a hostel.

11. P.W.6 / Rajathi is the younger sister of the deceased and P.W.5. She had, during deposition, identified the appellant / accused and stated that when she had gone to the deceased's house, the appellant / accused was there. The further evidence of P.W.6 is that the deceased was staying at Andipatti Bungalow and that due to the fight with her husband, she had gone to her sister / deceased's house and there she had seen the accused. The deceased had affixed a photo of the appellant / accused on the backside of her cellphone and when she had questioned the deceased, she had replied that she had contact only with the appellant / accused. P.W.6 had warned the deceased not to have relationship with the appellant / accused. Thereafter, the appellant / accused brought meat and vegetables and both the appellant / accused and the deceased had meals together. The further deposition of P.W.6 is that two year prior to the deposition, she had seen the deceased and the appellant / accused in Andipatti Bus Stop and that the deceased was wearing jewels and



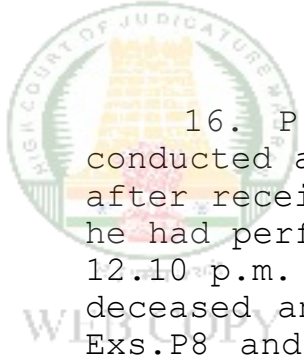
having money with her. When P.W.6 had questioned the deceased, she had replied that she was going to a function and P.W.6 had stayed for two days in the deceased's house, but her sister / deceased did not come back and thereby, she had gone to her brother's house at Ayyankottai. During that time, one Rakkammal came along with Police and informed about the death of her sister and that she went to the Government Rajaji Hospital, Madurai and identified the deceased as her sister. P.W.6 further deposed that the cellphone shown to her in the Court is that of her sister / deceased.

12. P.W.7 / Karuppudurai is a witness to the confession statement and seizure mahazar. According to his deposition, he knew the deceased and that he had seen the appellant / accused and two years prior to the date of deposition, when he was standing in Andipatti Bungalow Bus Stop along with Periasamy, the Police had arrested the appellant / accused and that during the examination, the appellant / accused had given a confession statement, which was recorded by the Police. P.W.7 and one Periasamy signed in the confession statement as witnesses and that the Police prepared a seizure mahazar for the recovery of the cellphone belonging to the deceased and he and Periasamy signed as witnesses to the seizure mahazar. Thereafter, P.W.7 and Periasamy accompanied the Police along with the accused, who took them to a dry Well situated on the western side of Karuppasamy Temple from where, the appellant / accused took out a wooden log. The wooden log was recovered by way of a seizure mahazar and that he and Periasamy signed as witnesses to the seizure mahazar. The admissible portion in the confession statement was marked as Ex.P3 and the seizure mahazars for recovery of cellphone and the wooden log were marked as Exs.P4 and P5 respectively. The cellphone and the wooden log were marked as M.Os.1 and 2 respectively.

13. P.W.8 / Muthurakku is the neighbour of the deceased and she had identified the body of the deceased at the Government Rajaji Hospital, Madurai.

14. P.W.9 / Pandian is the Grade-II Police Constable and according to him, when he was working in Perungudi Police Station, he had received an information from the Inspector and along with the body of the deceased, he went to Madurai Medical College and handed over the corpse to the Postmortem Doctor and he identified the body. Thereafter, he had received the viscera for sending it to the chemical analysis and handed over the body of the deceased to the relatives and reported it to the Inspector.

15. P.W.10 / Kalayarasi is the Sub-Inspector of Police, Perungudi Police Station and according to her, she had received a complaint / Ex.P1 from P.W.1 and she registered a case in Cr.No.239 of 2013 and she had marked the printed copy of F.I.R., as Ex.P6. Thereafter, she had sent the original F.I.R., to the Court and copies to the higher officials and placed the files for investigation before the Inspector.



16. P.W.11 / Dr.Natarajan is the Postmortem Doctor, who had conducted autopsy on the deceased. According to him, on 17.09.2013, after receiving requisition from the Inspector, at about 11.40 a.m., he had performed the postmortem on the body of the deceased at about 12.10 p.m. He had deposed in detail about the injuries found on the deceased and marked the postmortem report and the final opinion as Exs.P8 and P9 respectively. During the autopsy, he had noted the following details and injuries on the body of the deceased:

"Appearances found at the postmortem:

moderately nourished body of a female, aged about 40 years, Marbling of skin noted on both shoulders, both forearm. Postmortem peeling noted on back of chest and abdomen and buttock. Postmortem blebs noted on both shoulders and right side of chest.

The following ante mortem injuries are noted on the body:

1. Abrasion 10cm x 6 cm noted on right breast.
2. Abrasion 3cm x 2cm noted on left knee.
3. Abrasion 6cm x 4cm noted near left eyelid.

On dissection of chest: Fracture of ribs from 2-7 noted on right side chest at the level of midclavicular line with surrounding bruising noted. Right Pleural cavity contains 100ml of decomposed fluid, left side empty.

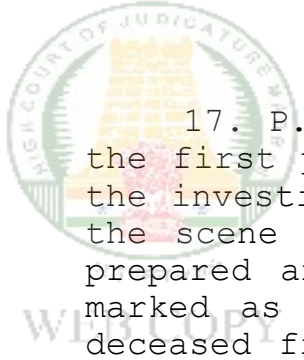
On dissection of scalp, skull and Dura:

Contusion scalp measuring 12cm x 10cm noted on right parieto occipital region. Diffuse subdural hemorrhage & subarachnoid hemorrhage noted over both the cerebral hemispheres. Contusion of brain measuring 14cm x 12cm noted on right temporo parieto occipital lobe of brain.

OTHER FINDINGS:

Peritoneal cavity - contains 50ml of decomposed fluid; Pleural cavities - described; Pericardium - contains 15ml of decomposed fluid; Heart - flabby; Lungs - cut section decomposed; Larynx & trachea - normal; Hyoid bone - intact; Stomach - contains 50ml of decomposed fluid with smell of decomposition, mucosa - decomposed; Liver, Spleen & kidneys - cut section decomposed; Small intestine - contains 20ml of decomposed fluid with smell of decomposition, mucosa - decomposed; Bladder - empty; Uterus - normal, cut section empty; Brain - described in injury column.

Thereafter P.W.11 / Postmortem Doctor under Ex.P9, had given a final opinion that the deceased would appear to have died of multiple injuries.



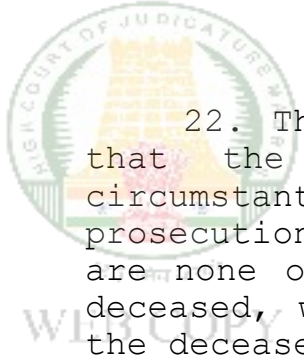
17. P.W.12 / Palani is the Investigation Officer, who conducted the first part of the investigation. According to him, he took up the investigation on 15.09.2013 at about 16.00 hours and he went to the scene of occurrence and inspected it at about 16.30 hours and prepared an observation mahazar marked as Ex.P10 and rough sketch marked as Ex.P11. Thereafter, he had taken out the body of the deceased from the Well and it was photographed for the purpose of ascertaining the identity of the deceased. Thereafter, the body of the deceased was sent to mortuary. On 16.09.2013, the photograph of the deceased was shown to the neighbours and other people living in the vicinity to ascertain the identity of the deceased. On enquiry, the deceased was identified and the witnesses were examined and their statements were recorded. On 17.09.2013, he had conducted an inquest and the inquest report was marked as Ex.P12. Thereafter, the postmortem was conducted on his request on the body of the deceased. Subsequent to the postmortem, the case was altered from 174 Cr.P.C., to one Section 302 r/w 201 I.P.C., and the alteration report was marked as Ex.P13. The witnesses were re-examined and their further statements were again recorded. P.W.12 had further deposed in detail about the arrest of the appellant / accused at about 02.00 p.m., on 19.09.2013 and about the confession made by the appellant / accused and the recovery of the material objects. Thereafter, the appellant / accused was remanded to judicial custody and the material objects were sent through separate Form-95 to the Court and the Forms-95 were marked as Exs.P14 and Ex.P15. Thereafter, since the subsequent Inspector, namely, Soorakumar, took charge, he had handed over the investigation to the subsequent Inspector, who was examined as P.W.13.

18. P.W.13 / Soorakumar is the subsequent Investigation Officer, who had filed the final report. According to him, he had examined the Doctor, who gave treatment to the appellant / accused and also obtained the viscera report, which was marked as Ex.P18. Thereafter, he examined the witnesses and recorded their statements and on completion of the investigation, he had filed a final report charging the appellant / accused for the offence under Section 302 r/w 201 I.P.C.

19. After completion of the evidence, when the above incriminating materials were put to the appellant / accused under Section 313 Cr.P.C., the appellant / accused denied the same as false, but, however, he did not choose to examine any witness on his side or mark any document.

20. Having considered the oral and documentary evidence, the Trial Court convicted the appellant for the offence under Sections 302 and 201 I.P.C., as stated above.

21. Heard Mr.P.Aandiraj, learned counsel appearing for the appellant / accused and Mr.C.Ramesh, learned Additional Public Prosecutor appearing for the State and carefully perused the judgment of the Court below as well as the materials placed on record.



22. The learned counsel for the appellant / accused submitted that the entire case of the prosecution rests upon the circumstantial evidence and the last seen theory as projected by the prosecution and it clinches upon the evidence of P.Ws.5 and 6, who are none other than the younger brother and younger sister of the deceased, who have spoken about seeing the appellant / accused and the deceased prior to the occurrence.

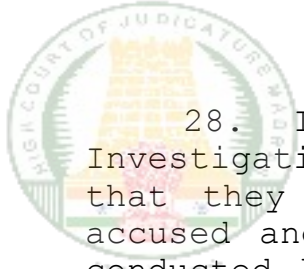
23. Further, the learned counsel for the appellant / accused submitted that the evidence of P.Ws.5 and 6 cannot be believed and that their evidence is only an improved statement since they have not stated anything about having seen the appellant / accused with the deceased, when they were examined by the Investigation Officer on earlier occurrences and that they are mere chance witnesses, who have not been brought in by the prosecution to link the appellant / accused with the deceased.

24. The learned counsel for the appellant / accused further submitted that in a case of circumstantial evidence, the circumstances should form a chain so complete that there is no escape from the conclusion that with all human probability the crime was committed by the accused alone, but in this case, it is lacking and as such, the appellant / accused ought to have been acquitted.

25. Further, the learned counsel for the appellant submitted that even assuming for a moment that the Court believes that the appellant / accused and the deceased were last seen together, the same cannot be a ground to infer that the appellant / accused murdered the deceased and when the chain of events have snapped and when there is no material or legal evidence to arrive at a complete conclusion that the appellant / accused is the only person, who has committed the murder, the Court cannot rely on such evidence and convict the appellant / accused.

26. The further argument put forth by the learned counsel for the appellant / accused is that the evidence of P.W.7 cannot be believed inasmuch as his evidence with regard to the arrest and recovery is highly artificial and cannot be accepted.

27. It is further argued by the learned counsel for the appellant / accused that though the cellphone belonging to the deceased was stated to have been recovered from the appellant / accused, no scientific investigation had been done to prove that the cellphone belongs to the deceased and that no investigation had been done to prove or disprove the presence of the deceased and the appellant / accused together at the scene of occurrence and elsewhere further more the evidence relating to the recovery of the wooden log cannot have any significance when it had not been subjected to scientific or chemical examination with regard to the aspect of it having been used in the offence. In this regard, the learned counsel for the appellant / accused took us to the deposition of P.Ws.5 and 6 and P.W.12 / Investigation Officer.



28. It is the case of the prosecution that P.W.12 / Investigation Officer had examined P.Ws.5 and 6 on 16.09.2013 and that they had not stated anything about seeing the appellant / accused and the deceased together. On 17.09.2013, postmortem was conducted by P.W.11 and he had given an opinion opining that the deceased died due to the injuries. P.W.12 / Investigation Officer had examined P.W.11 / Postmortem Doctor on 17.09.2013 and only on 18.09.2013, the case was altered to one under Sections 302 and 201 I.P.C., from 174 Cr.P.C. Thereafter, on 18.09.2013, he had gone again to Andipatti and had examined P.Ws.5 and 6 and that they have stated about the illicit relationship between the appellant / accused and the deceased. Therefore, admittedly it is the evidence of P.W.12 / Investigation Officer that when he had examined P.Ws.5 and 6 on 16.09.2013 and 17.09.2013, they had not stated anything about the relationship between the deceased and the appellant/accused and or having seen the appellant / accused and the deceased together prior to the occurrence.

29. It is the contention of the learned counsel for the appellant that P.W.5's evidence before the Court is nothing but an improved version, which is not admissible in evidence, since the Investigation Officer had admitted that twice he had examined P.W.5 and that P.W.5 did not speak anything about the last seen of the appellant / accused with the deceased and further that he is a resident of Ayyankottai and not of Andipatti Bungalow and he could be nothing but a chance witness to strengthen the case of the prosecution and to fill in the missing gap. Further, P.W.6 is also a resident of Mangulam and that her evidence also could not be believed since she has not stated anything about the purpose of visiting her sister / deceased and that PW 5 and PW 6 being chance witnesses their evidence have to be strictly scrutinized and thereby submitted that the Trial Court erred in believing the evidence of P.Ws.5 and 6 and convicting the appellant / accused.

30. It is the further contention of the learned counsel for the appellant / accused that the investigation has not been done in a proper manner and that the inquest was conducted only at the hospital and there is absolutely no witness to speak about the missing of the deceased and thereby, it is totally unsafe to rely on such evidence brought in by the prosecution. Moreover it is the admitted case of the prosecution that the deceased was engaged in prostitution and that she used to be with several lorry drivers at Nandhi Patel Orchard and that as per Ex.P12, the inquest report the reason for the death of the deceased in Column No.9 is stated to be that the deceased used to frequently come to Perungudi Karuppasamy Temple during night hours and that she used to indulge in prostitution with lorry drivers and cleaners who had parked their lorries near Karuppasamy Temple and used to take them into Nandhi Patel orchard and was running her family by indulging in prostitution and that on 14.09.2013, in the night hours, some lorry drivers and cleaners had taken her into the orchard and had intercourse with her and thereafter, due to the dispute had



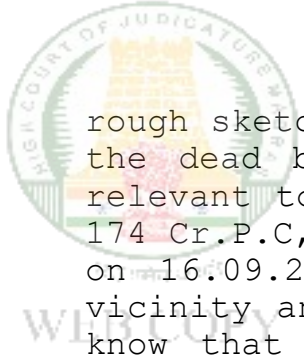
committed the murder of the deceased and thrown the body into the Well and that at Column No.15 that it had been the consented opinion of all the Panchayatars to the inquest that the death had been committed by some lorry drivers and cleaners.

31. The learned Additional Public Prosecutor appearing for the State submitted that though the prosecution case is a case of circumstantial evidence P.Ws.5 and 6, who are the brother and sister of the deceased have spoken about the appellant / accused being seen together in the company of the deceased prior to the occurrence and that the prosecution had proved the case by recovery of M.Os.1 and 2, namely, cellphone belonging to the deceased and wooden log used for committing the murder of the deceased respectively and thereby, the prosecution has proved the case beyond all reasonable doubts.

32. No doubt, it is a case of circumstantial evidence. What is to be seen is as per cardinal rules of criminal jurisprudence is that, criminal cases cannot be decided on the basis of hypothesis and the main aspect that is to be kept in mind is that, it is for the prosecution to prove the guilt of the accused charged beyond all reasonable doubts. In a case where there is no eyewitness and, which rests on circumstantial evidence, the prosecution is obligated to prove all those circumstances which leave no manner of doubt to establish the guilt of the accused person i.e., chain of circumstances must be complete and must clearly point to the guilt of the accused. Chain of circumstances means that all the circumstances are linked up with one another and the chain does not get broken in between. The case of circumstantial evidence of the following character needs to be fully established:

- (i) Circumstances should be fully proved.
- (ii) Circumstances should be conclusive in nature.
- (iii) All the facts established should be consistent only with the hypothesis of guilt.
- (iv) The circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused and that suspicion, however grave, cannot taken place of legal proof and the influence of guilt can be justified only when all the incriminating facts and circumstances are found to be compatible with the innocence of the accused or the guilt of any other person.

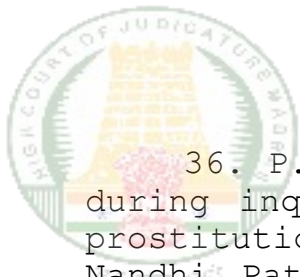
33. At this stage, it would be beneficial to take into consideration some of the facts as admitted by the prosecution, which would help in arriving at the just finding and conclusion. In this case on 15.09.2013, on the intimation given by P.W.2 to P.W.1 in respect of finding of a dead body inside a dry well, a complaint / Ex.P1 was lodged before P.W.10 / S.I. of Police, Perungudi Police Station and thereafter, P.W.12 took up the investigation on 15.09.2013 and at about 04.00 p.m., he went to the scene of occurrence and prepared observation mahazar / Ex.P10 and



rough sketch / Ex.P11 in the presence of the witnesses and he lifted the dead body from the Well and sent it for postmortem. It is relevant to mention that till the case was registered under Section 174 Cr.P.C, the identity of the deceased was not known. Thereafter, on 16.09.2013, the I.O had enquired about the deceased in the vicinity and examined P.W.4 and other witnesses and he had come to know that the deceased is a resident of Aundipatti Bungalow and thereafter, he went there and examined P.Ws.5 and 6 and other persons, namely, Senthoorapandi, Ponnu, Mariammal and Dhanabalan (who were not examined before the court) and recorded their statements. On 17.09.2013, he sent the body of the deceased to the Hospital through P.W.9 for conducting postmortem and the inquest was conducted at the Hospital. On 18.09.2013, he examined P.W.11 /the Doctor, who conducted the postmortem and after recording his statement, he came to know that the deceased died due to the injuries and thereafter, the case was altered to one under Sections 302 and 201 I.P.C. On 18.09.2013, again he examined P.Ws.5 and 6 and the other named persons and only thereafter, he had come to know that the appellant / accused had illicit intimacy with the deceased and that only thereafter he had searched the appellant / accused. It is the further case of P.W.12 / Investigation Officer that he had arrested the appellant / accused near Aundipatti Bungalow Bus Stop on 19.09.2013 at about 02.00 p.m., in the presence of the witnesses P.W.7 / Karrupudurai and Periasamy and he had recorded the confession statement of the accused in the presence of the witnesses and in pursuance of which, a cellphone had been recovered from the appellant / accused under the seizure mahazar marked as Ex.P4 and the cellphone had been marked as M.O.1 and the wooden log had been recovered under the seizure mahazar marked as Ex.P5 and the wooden log had been marked as M.O.2.

34. Now, what is to be seen is that though it is the admitted case of the prosecution that P.Ws.5 and 6, who are the brother and sister of the deceased, have been examined by the Investigation Officer on 16.09.2013 as well as on 17.09.2013, strangely, they have not spoken to anything about having seen the appellant / accused with the deceased prior to the occurrence. However, only after the alteration of the case to one under Sections 302 and 201 I.P.C., on 18.09.2013, the witnesses, who were examined earlier, had stated about the illicit intimacy between the appellant / accused and the deceased which makes the case of the prosecution highly doubtful.

35. Further, P.W.5 had not stated anything about the exact date on which he had seen the appellant / accused and the deceased together. It is the case of P.W.5 that he used to frequently talk with his sister / deceased over cellphone and that she had not spoken to him for the past three days and it is the further statement of P.W.5 that he came to know about the illicit relationship between the appellant / accused and the deceased from others and that he does not know anything directly.



36. P.W.12 had deposed before court that during his enquiry and during inquest, he came to know that the deceased was engaged in prostitution and that she used to be with several lorry drivers at Nandhi Patel Orchard and that as per Ex.P12, the reason for the death of the deceased in Column No.9 stated to be that the deceased used to frequently come to Perungudi Karuppasamy Temple during night hours and that she used to indulge in prostitution with lorry drivers and cleaners who had parked their lorries near Karuppasamy Temple and used to take them into Nandhi Patel orchard and was running her family by indulging in prostitution and that on 14.09.2013, in the night hours, some lorry drivers and cleaners had taken her into the orchard and had intercourse with her and thereafter, due to the dispute had committed the murder of the deceased and thrown the body into the Well and that at Column No.15 that it had been the consented opinion of all the Panchayatars to the inquest that the death had been committed by some lorry drivers and cleaners, thereby the contention of the learned counsel for the appellant / accused is that though P.Ws.5 and 6 had been examined two times prior to the inquest, they have not spoken anything about seeing the appellant / accused with the deceased prior to the occurrence. Thereby, the evidence of P.Ws.5 and 6 cannot be believed. More so, that they are nothing but chance witnesses, who were residing elsewhere and that their evidence with regard to the having seen the deceased and the appellant / accused together cannot be believed. Moreover, P.W.5 having stated about the talking to his sister / deceased frequently over cellphone and that the recovery of a cellphone stating to be that of the deceased from the appellant / accused, no scientific investigation had been done by P.W.12 with regard to the presence of the appellant / accused along with the deceased and that no investigation has been done and no evidence has been let in by the prosecution to prove that the deceased and the appellant / accused were together.

37. As stated by the learned counsel for the appellant / accused, the theory of last seen the appellant / accused and the deceased fails. Apart from the above, the prosecution has relied on the recovery of M.Os.1 and 2, namely, cellphone and wooden log based on the alleged confession made by the appellant / accused. But, the prosecution has failed to establish any link between the alleged weapon and the crime by subjecting them to scientific examination and thereby in the failure of any scientific examination being done, the alleged recovery would not in any manner go to conclusively prove the guilt of the appellant / accused. When no other circumstances have been projected by the prosecution to establish the guilt of the appellant / accused, it is highly unsafe to convict the appellant / accused based on the evidence of P.Ws.5 and 6.

38. In a recent decision in Satish Nirankari vs. State of Rajasthan, reported in (2017) 8 SCC 497, the Honourable Apex Court with regard to deciding cases of circumstantial evidence, has held as follows:



"29. It is now well established, by a catena of judgments of this Court, that circumstantial evidence of the following character needs to be fully established:

- (i) Circumstances should be fully proved.
- (ii) Circumstances should be conclusive in nature.
- (iii) All the facts established should be consistent only with the hypothesis of guilt.
- (iv) The circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused (see *State of U.P. v. Ravindra Prakash Mittal* [(1992) 3 SCC 300 : 1992 SCC (Cri) 642]; *Chandrakant Chimanlal Desai v. State of Gujarat* [(1992) 1 SCC 473 : 1992 SCC (Cri) 157]). It also needs to be emphasised that what is required is not the quantitative, but qualitative, reliable and probable circumstances to complete the claim connecting the accused with the crime. Suspicion, however grave, cannot take place of legal proof. In the case of circumstantial evidence, the influence of guilt can be justified only when all the incriminating facts and circumstances are found to be not compatible with the innocence of the accused or the guilt of any other person.

....

31. Sir Alfred Wills in his book *Wills' Circumstantial Evidence* (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence:

- "(1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum;
- (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability;
- (3) in all cases, whether of direct or circumstantial evidence, the best evidence must be adduced which the nature of the case admits;
- (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and
- (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted."

...



40. In *Bodhraj v. State of J&K* [(2002) 8 SCC 45 : 2003 SCC (Cri) 201, this Court after quoting a number of earlier judgments, held as under: (SCC pp. 55-56, paras 10-11)

"10. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See *Hukam Singh v. State of Rajasthan* [(1977) 2 SCC 99 : 1977 SCC (Cri) 250], *Eradu v. State of Hyderabad* [AIR 1956 SC 316 : 1956 Cri LJ 559], *Earabhadrapa v. State of Karnataka* [(1983) 2 SCC 330 : 1983 SCC (Cri) 447], *State of U.P. v. Sukhbasi* [1985 Supp SCC 79 : 1985 SCC (Cri) 387], *Balwinder Singh v. State of Punjab* [(1987) 1 SCC 1 : 1987 SCC (Cri) 27], and *Ashok Kumar Chatterjee v. State of M.P.* [1989 Supp (1) SCC 560 : 1989 SCC (Cri) 566... In *Bhagat Ram v. State of Punjab* [AIR 1954 SC 621 : 1954 Cri LJ 1645], it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

11. We may also make a reference to a decision of this Court in *C. Chenga Reddy v. State of A.P.* [(1996) 10 SCC 193 : 1996 SCC (Cri) 1205], wherein it has been observed thus: (SCC pp. 206-07, para 21)

'21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances shall be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."

39. In view of the above discussions, while relying on the facts and circumstances of the case and the evidence relied on by the prosecution being tested on the touch-tone of judicially laid parameters, we have no hesitation in holding that the prosecution in this case has failed to meet the standards of evidence of indisputable nature. This case does not meet such standard to prove the complexity of the appellant / accused in this crime beyond all reasonable doubts. Hence, the appeal preferred by the appellant / accused deserves to be allowed and the impugned Judgment of the Court below is liable to be set aside.



40. In the result, the criminal appeal is allowed and the Judgment, dated 26.04.2016, made in S.C.No.79 of 2015, by the learned I Additional Sessions District Judge, Madurai, is hereby set aside and the appellant / accused is acquitted of all the charges. The fine amount, if paid shall be refunded to the appellant / accused. It is submitted that the appellant / accused is in prison. The appellant / accused shall be released forthwith from the prison, if he is no longer required in connection with any other case. However, we confirm the order of the trial Court with regard to the recommendation to the State Government, under Section 357A(3) Cr.P.C., to award compensation of Rs.3,00,000/- to the minor children of the deceased Lakshmi, wife of Bakkianathan through their legal guardian for their rehabilitation.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

- 1.The I Additional Sessions District Judge, Madurai.
 - 2.The Principal District and sessions Judge, Madurai.
 - 3.The Judicial Magistrate No IV, Madurai.
 - 4.The Chief Judicial Magistrate, Madurai.
 - 5.The District Collector, Madurai.
 - 6.The Superintendant, Central Prison, Madurai.
 - 7.The Director General of Police, Mylapur, Chennai-09.
 - 8.The Inspector of Police,
Perungudi Police Station, Madurai District.
 - 9.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- +2cc to M/S.P.ANDIRAJ, Advocate SR.No.89186, 89262.

JUDGMENT

IN

Crl.A.(MD) No.121 of 2017
22.11.2017