

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 21.12.2017**

Date of Reserving the Judgment	Date of Pronouncing the Judgment
21.11.2017	21.12.2017

CORAM:**THE HONOURABLE MR.JUSTICE R.SUBBIAH****and****THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA****CrI.A.(MD) No.344 of 2016**

Sangili @ Sangilimadasamy

... Appellant / Accused

-VS-

State, rep.by

The Inspector of Police

Sankarankoil Taluk Circle

Kuruvikulam Police Station

Tirunelveli District

(Cr.No.146 of 2011)

... Respondent / Complainant

Criminal appeal filed under Section 374(2) Cr.P.C., to set aside the Judgment of conviction and sentence passed by the III Additional District and Sessions Judge, Tirunelveli, dated 20.03.2015 in S.C.No.98 of 2013.

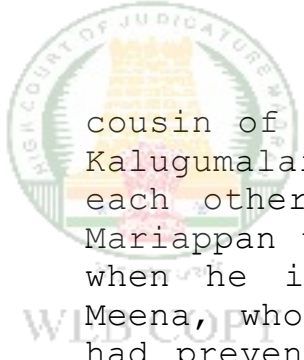
For Appellant : Mr.A.Jayaramachandran

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 against the Judgment, dated 20.03.2015, made in S.C.No.98 of 2013, whereby the learned III Additional District and Sessions Judge, Tirunelveli, found the appellant guilty and convicted him under Section 302 I.P.C., and sentenced him to undergo imprisonment for life and also to pay a fine of Rs.1,000/-, in default, to undergo one year rigorous imprisonment.

2. The case of the prosecution in brief is that the *de facto* complainant, namely, Subramania Asari is a resident of Kuruvikulam Village and he is the father of the deceased - Mariappan. The appellant / accused, namely, Sangili @ Sangilimadasamy, who belongs to Sattur Nalli Village, is the



cousin of the wife of the deceased, namely, Meena, who belongs to Kalugumalai. The deceased - Mariappan and Meena fell in love with each other and got married twelve years back. The deceased - Mariappan was working abroad and during 2008 he had come back and when he intended to go abroad again for employment, his wife Meena, who was not interested in her husband going abroad again, had prevented him from making arrangements to go abroad and with regard to the said issue, there was a dispute between them and due to the said dispute, Meena had committed suicide by self-immolation and in respect of which, a case in Crime No.25 of 2008 was registered under Section 306 I.P.C., in Kuruvikulam Police Station against the deceased - Mariappan and his mother - Sendammal and inasmuch as the said case having ended in acquittal, the appellant / accused, who got enraged with the deceased, had planned to murder him and accordingly, on 17.07.2011, at about 17.30 hours, when the deceased - Mariappan had gone to the workshop belonging to Rajendran, to take back his TVS XL Two Wheeler left there for repairing the appellant / accused cut the deceased Mariappan with Aruval on his neck, hands and face inflicting cut injuries on his head portion, below the left forearm, right hand middle finger, ring finger, left hand palmar, left hand shoulder, right hand pollex and right hand palmar and disentangled the head of the deceased and thereby, the appellant / accused had committed the murder punishable under Section 302 I.P.C. Subsequently, with regard to the said incident, the father of the deceased had lodged a complaint before the respondent - Police.

3. The respondent - Police, based on the complaint lodged by the father of the deceased, had registered a case in Crime No.146 of 2011, against the appellant / accused under Section 302 I.P.C., and after thorough investigation, the respondent - Police filed the final report before the learned Judicial Magistrate, Sankarankovil, who had taken cognizance of the final report in P.R.C.No.2 of 2013 and inasmuch as the offence punishable under Section 302 I.P.C., being exclusively triable by the Court of Sessions, the learned Judicial Magistrate, after compliance of procedure under Section 207 Cr.P.C., had committed the case, under Section 209 Cr.P.C., to the learned Principal District and Sessions Judge, Tirunelveli, who took the same on file in S.C.No.98 of 2013 and made over the same to the learned III Additional District and Sessions Judge, Tirunelveli / Trial Court, for trial. Subsequently, the Trial Court had framed charges under Section 302 I.P.C., against the appellant / accused and when the appellant / accused was explained and questioned about the charges framed against him, he had denied the charges framed against him and sought for trial to prove his case and accordingly, trial was conducted.

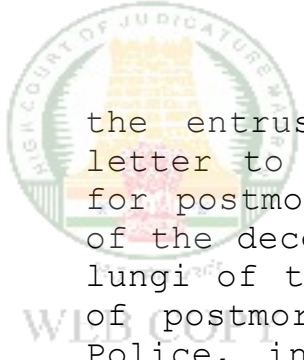


4. During the course of trial, on the side of the prosecution, P.Ws.1 to 16 were examined, Exs.P1 to P17 and M.Os.1 to 9 were marked.

5. P.W.1 / Subramania Asari, who is the father of the deceased and the informant/de facto complainant, in his evidence, had deposed about the marital life of his son / deceased and daughter-in-law / Meena, the suicide committed by his daughter-in-law / Meena, due to the marital discord, case registered against the deceased/his son and his wife and the acquittal of the case and the murder committed by the appellant / accused and also lodging of complaint / Ex.P1 with regard to the said murder before the respondent - Police.

6. P.Ws. 2, 3, 4 and 6 namely, Rajendran, Mariappan, Subramanian and Uthandaraman respectively, who are known to PW1, the deceased and the appellant/accused and stated to be the eye-witnesses present at the scene of occurrence had not supported the case of the prosecution and therefore, they were treated as hostile witnesses.

7. P.W.5 - Subramanian, in his evidence, had deposed about him coming to know about the incident and being present during the inquest conducted on the body of the deceased on 18.07.2011 in the Government Hospital. P.W.7 - Prithiviraj / Village Administrative Officer, in his evidence, had deposed about his signing as a witness in Ex.P2 / Observation Mahazar, Ex.P3 / Seizure Mahazar, Ex.P4 / Seizure Mahazar and Ex.P5 / Seizure Mahazar, for the seizure of M.O.1 / bloodstained sand, M.O.2 / sample sand, M.O.3 / one pair bloodstained chappal M.O.4 / Aruval and M.O.5 / TVS-XL-67-6542, M.O.6 / shirt and M.O.7 / lungi and also to the arrest and subsequent confession statement of the appellant / accused recorded by the Investigating Officer. P.W.8 - Pounraj @ Rajkumar / Photographer, in his evidence, had deposed about having taken photographs of the body of the deceased at the scene of occurrence on the instructions given by Inspector of Police and handing over the photographs and compact disk to the Inspector of Police. P.W.9 - Dr.Mariamammal, Chief Civil Surgeon, in her evidence, had deposed about the autopsy conducted by her on the dead body as per Ex.P6 / requisition letter given by the Inspector of Police and issuance of Ex.P7 / Postmortem Report. P.W.10 - Gajendravardhan, Assistant Director, Forensic Science Lab, Tirunelveli, in his evidence, had deposed about the examination and analysis of the Material Objects and issuance of Ex.P8 / Biological Report and Ex.P9 / Serological Report with regard to classification of blood found in the material objects. P.W.11 - Arumugasamy / Head Constable, in his evidence, had deposed about the entrustment of the first information report and the postmortem report before the learned Jurisdictional Magistrate. P.W.12 - Kulanthaivelu / Head Constable, in his evidence had deposed about



the entrustment of dead body along with Ex.P13 / requisition letter to the Medical Officer, Sankarankovil Government Hospital for postmortem and entrustment of the dead body to the relatives of the deceased and entrustment of M.Os.8 and 9, namely, shirt and lungi of the deceased to the Inspector of Police after completion of postmortem. P.W.13 - Abraham Jebamani / Sub Inspector of Police, in his evidence, had deposed about the registration of F.I.R., / Ex.P14 on receipt of the complaint / Ex.P1 given by the *de facto* complainant / P.W.1.

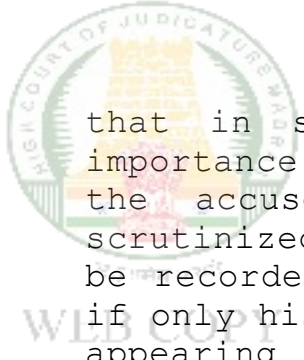
8. P.W.14 - Lakshmipandi Mathi / Bench Clerk Grade-II, in her evidence, had deposed about the reception of material objects under Form-95, sending the material objects to Forensic Science Lab and preservation of blood from the body of the deceased for chemical analysis as per the orders of the learned Judicial Magistrate.

9. P.W.15 - Sivakumar / Inspector of Police, in his evidence, had deposed about the investigation conducted by him, preparation of observation mahazar, seizure of material objects, sending the Material Objects to forensic lab, arrest of the appellant / accused and recording his confession statement, inquest conducted by him, sending the body of the deceased for postmortem and recording statements from the witnesses. P.W.16 - Jeyakumar / Inspector of Police, who is the successor to P.W.15, in his evidence, had deposed about the receiving of report from the forensic science lab, recording of statements from the witnesses and filing of final report after completion of investigation.

10. After completion of the examination of witnesses, when the incriminating materials and circumstances culled out from the prosecution witnesses were put to the appellant / accused, under Section 313 Cr.P.C., he had denied the evidence adduced on the prosecution side as false, however, no oral and documentary evidence was adduced on the side of the defence.

11. After hearing both sides and perusing the oral and documentary evidence adduced by the witnesses examined on the side of the prosecution, the learned Trial Judge, by Judgment dated 20.03.2015, found the appellant / accused guilty for the offence under Section 302 I.P.C., and sentenced him as stated above. Challenging the said conviction and sentence, the appellant / accused has preferred the present criminal appeal.

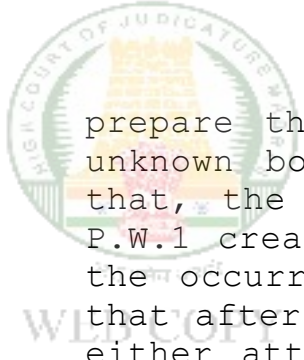
12. The learned counsel for the appellant / accused contended that the prosecution had projected P.Ws. 1 to 4 and P.W.6 as the eye-witnesses to the occurrence, whereas excepting P.W.1 all the other witnesses have not supported the case of the prosecution and they have been treated as hostile and contended



that in such circumstances the evidence of P.W.1 gains much importance and thereby to arrive at the conclusion of the guilt of the accused the testimony of the sole witness has to be scrutinized with much care and caution and thereby, conviction can be recorded on the basis of the statement of the single witness, if only his credibility is not shaken by any adverse circumstances appearing on record against him. If the occurrence is stated to have happened in a place or time where there was no possibility of any other eyewitness being present the court should not insist on corroboration by any other witness but if the occurrence is stated to have happened during the day time where the presence of other persons are available, the court can place reliance on testimony of the sole witness if only it raises above the standard of suspicion and doubt. The learned counsel for the appellant / accused submitted that in this case the sole witness PW1 is none other than the father of the deceased and is an interested witness and his testimony was tainted with self contradiction and embellished with falsehood and unbelievable exaggeration and in such circumstance it is highly unsafe to fasten culpable liability on the appellant/accused to convict the appellant / accused on the basis of such uncorroborated and suspicious testimony of solitary witness. The learned counsel for the appellant / accused further contended that though it is a well settled legal position that the Court can convict a person, based on the testimony of single witness the evidence so adduced by the solitary witness should instill trust and inspire confidence in the mind of the Court so as to arrive at a finding to convict the accused, and that when especially the solitary witness being related to the deceased and very much being interested in the prosecution case the Courts should be extremely cautious and careful while scrutinizing his evidence.

13. Further, the learned counsel for the appellant / accused contended that the behaviour and conduct of P.W.1 as testified by him at the time of occurrence and the manner in which, he is stated to have reacted after the occurrence, causes grave shadow of doubt about his presence at the scene of occurrence and having witnessed the occurrence.

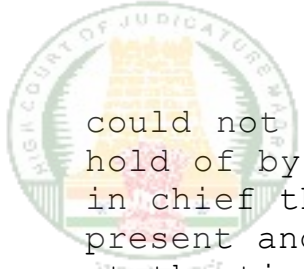
14. The learned counsel for the appellant / accused further contended that P.W.1 had deposed, in his evidence, that immediately after the murder, an unknown boy wrote the complaint / Ex.P1 at his instructions and thereafter, he lodged the same at the Police Station. It is natural for a father, who witnessed the murder of his son, would either try to prevent the attack or would raise hue and cry and if his son would have been attacked he would either take the victim to the hospital or would cry at the place and attempt to call persons known to him or would go to the Police Station seeking for help. But, in this case, the conduct of P.W.1 / father of the deceased immediately having chosen to



prepare the complaint / Ex.P1 at the place with the help of an unknown boy makes his conduct shrouded with doubt. Apart from that, the fact that no bloodstains being found on the dress of P.W.1 creates a doubt with regard to his presence at the time of the occurrence since it would be a natural conduct of a father that after seeing his son being murdered in his presence he would either attempt to prevent the occurrence or go to rescue of his son or that immediately would see whether his son is alive or not.

15. Further, the learned counsel for the appellant / accused contended that it is worthwhile to note that P.W.1 had categorically deposed that P.Ws.2, 3 and 4 were present at the time of occurrence whereas he had asked one unknown boy to prepare the complaint EX P1. It would have been probable if he had chosen to ask P.Ws. 2, 3 and 4 who are adult male members and who were well known to him to prepare a complaint rather than ask an unknown boy, who was neither identified nor brought by the Police to speak about the occurrence. Whereas at the time of his cross-examination, PW1 had totally self contradicted his own version in the earlier part of the chief examination admitting that EX P1/ the complaint was written by a Police Constable based on his statement and thereafter, his signature was obtained in it, thereby making it lucid that either he was not present at the scene of occurrence or that an earlier a complaint was given to the Police and thereafter, it had been suppressed to suit the convenience of the prosecution.

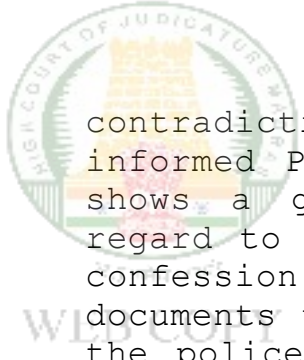
16. The learned counsel for the appellant / accused further contended that the interpolations found in Ex.P1 also raises more doubt with regard to the prosecution case. P.W.1 had stated in Ex.P1 as well as in the evidence that the occurrence had happened when the deceased had gone to take back his two-wheeler left for repairing at the workshop of P.W.2 and it was during that time, the appellant / accused had attacked the deceased with Aruval. However, it is the categorical evidence of P.W.2/ the owner of workshop that since the day of occurrence being Sunday, his shop was closed and that he was not present at the scene of occurrence, thereby making it clear that the version of P.W.1 that the deceased had come to the workshop of PW2 to take back his two wheeler left for repair had been invented for the purpose of fixing his presence and the place of occurrence. Further, P.W.1 had deposed in one place of his evidence that the deceased was attacked when he was trying to start his two-wheeler, whereas in another place, he had deposed that the deceased was standing four feet away from the two-wheeler when he was attacked. Further, the evidence of P.W.1 with regard to the manner of assault that the appellant/accused caught hold of the deceased while the injuries were inflicted on him creates a doubt, since the nature and number of injuries sustained by the deceased as noted in Ex.P7 reveals that the accused had sustained nine cut injuries and the same



could not have been inflicted while the deceased was being caught hold of by the appellant/accused. Further, P.W.1 had also deposed in chief that at the time of the occurrence, P.Ws. 2, 3 and 4 were present and he had also deposed that no local persons were present at the time of the occurrence, whereas admittedly the occurrence is said to have taken place in a busy street with shops and offices on both sides and thereby, the self-contradictory statements of P.W.1 makes it crystal clear that P.W.1 could not have been present at the time of occurrence and could not have witnessed the occurrence. The counsel for the appellant/accused contended that the testimony of the sole witness being self contradictory and being highly unnatural, the Trial Court erred in convicting the appellant / accused placing reliance on the solitary evidence of P.W.1 which was tainted with contradictions and falsity.

17. Further, the learned counsel for the appellant / accused contended that the manner in which the arrest, confession, seizure of Material Objects and preparation of mahazars have been done shows that it had been done in a manner to suit the prosecution case. It is a general rule that only when independent witnesses are not available, the Investigation Officer can seek the help or approach official witnesses, like V.A.O., and other Government Servants. But, in this case, though it had been categorically admitted by P.W.7 / V.A.O., and P.W.15 / Investigation Officer that several persons were present at the time of preparation of mahazars, seizure of material objects on 17.07.2011 and that several persons were present at the bus stand where the appellant/accused was arrested on the next day i.e. 18.07.2011, at about 04.00 p.m., and confession was recorded and weapon and clothes had been recovered from him, the conduct of the Investigation Officer in not choosing any other independent witness and having chosen to bring P.W.7 / V.A.O., to the spot to attest the recoveries, arrest and confession both on 17.07.2011 as well as on 18.07.2011, makes it palpable that the entire arrest, confession and recovery are stage managed to suit the will and pleasure of the prosecution. Further, during deposition, P.W.1 had not identified the weapon used and also the evidence of P.W.10 / Assistant Director, Forensic Science Lab, Tirunelveli, had categorically deposed that no bloodstain was detected from the Aruval and that being coupled with the fact that P.W.7 / V.A.O., had categorically deposed that there was no water in the odai (channel) from where the Aruval was recovered and thereby the non detection of the bloodstain in the Aruval makes it abundantly clear that the recovery of Aruval is nothing but a sham.

18. The learned counsel for the appellant / accused further submitted that the evidence of P.W.7 / V.A.O., was clear that on 18.07.2011, P.W.15 / Investigation Officer had come to his office and then to Kalugumalai Bus Stand, where the appellant / accused was arrested, whereas P.W.15 / Investigation Officer



contradicting the evidence of P.W.7 / V.A.O., had deposed that he informed P.W.7 / V.A.O., to come to Kalugumalai Bus Stand which shows a glaring contradiction, thereby creating a doubt with regard to the presence of P.W.7 / V.A.O., at the time of arrest, confession and recovery and making it clear that the entire documents with regard to arrest and recoveries were fabricated at the police station. Further, P.W.15 / Investigation Officer, in his evidence, had deposed that he prepared Ex.P16 / Inquest Report in the presence of Panchayatars. But, strangely, none of the witnesses, who had attested the Inquest Report, have been examined during the course of trial. Besides that, though P.W.15 had claimed that he prepared Ex.P16 / Inquest Report on 17.07.2011 at about 07.15 p.m., he had despatched the same to the Court only on the next day i.e., 18.07.2011 at about 06.15 p.m., through P.W.11 / Head Constable and the said delay had not been explained by the prosecution. Further, all the witnesses, who had attested Ex.P16 / Inquest Report are residents of Kadayanallur, which is nearly 50 kms., from Kuruvikulam, improbably the preparation of Ex.P16 / Inquest Report on 17.07.2011 at about 07.15 p.m., whereas P.W.1, in his evidence, had deposed that he met the witnesses to the inquest who are his relatives only on the next day i.e., 18.07.2011 at the Hospital making it clear that the documents were not prepared as stated in the prosecution case.

19. Further, yet another argument was put forth by the learned counsel for the appellant / accused that the materials and exhibits, which were stated to have been recovered or prepared in the course of investigation during 19-07-2011 had been sent to the Court belatedly and all the statements of witnesses recorded u/s 161(2) Cr.P.C have been sent to court after almost 1 ½ years and have been received by the court on 28-01-2013 at the time of filing the final report, thereby creating a doubt with regard to the prosecution case. In this case, P.W.14 / Court Staff had categorically stated that the case properties have been received on 9-08-2011, Exs.P3, P4 and P5 / Athatchis were received at the Court only on 19.07.2011 and Ex.P2 / Observation Mahazar and all 161(3) Cr.P.C., statements were received at the Court only on 21.08.2013 along with the Final Report, and thereby the learned counsel for the appellant / accused further contended that the delay in sending the statements of witnesses, athatchies and other materials to the Court vitiated the entire prosecution, since there were ample chance for the prosecution to cook up and create and fabricate documents and materials to suit the prosecution.

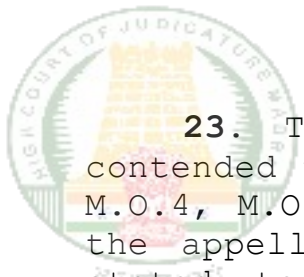
20. The learned counsel for the appellant / accused further contended that it is the categorical admission of P.W.1 that there were so many other people, who were in inimical terms with the deceased and who nurtured animosity against the deceased. P.W.1 had admitted that there was a financial dispute between the deceased and the people belonging to other community and that



there was a dispute between the earlier employee of appellant/accused and the deceased who had nurtured enmity towards the deceased. Further, P.W.1 had also admitted that the deceased was having illicit affair with a woman belonging to other community and thereby, the persons belonging to the other community were antagonized with him and in pursuance of which, there were lot of enmity against the deceased and thereby P.W.1 was apprehending danger to the life of his son. P.W.1 had also admitted that the mother-in-law and brothers-in-law of the deceased were also antagonized with his son / deceased with regard to the custody of the minor daughter and in view of the above circumstances, the learned counsel for the appellant / accused contended that the deceased was having so many enemies, and when the motive for the offence having not proved by any evidence and the other motives having not been ruled out the trial Court ought not to have believed the uncorroborated solitary evidence of P.W.1, and convicted the appellant.

21. The learned counsel for the appellant further contended that though as per Ex.P2 / Observation Mahazar and the Rough Sketch /EX P15 prepared by the respondent/ Investigating Officer he had noted about the existence of several shops and offices on either side of the scene of occurrence and that the time of occurrence being 5.30 PM there is every possibility that several persons would have been present at the scene of occurrence and it is highly strange that none of the independent witness had corroborated the evidence of PW1. Moreover even as per the F.I.R. / Ex.P1, P.W.1 had stated that the occurrence was known to one Rasu son of Karrupasamy Thevar and others who were present there. But strangely Rasu son of Karuppasamy Thevar was not examined as a prosecution witness. Further, while deposing before the Court P.W.1 had specifically named and stated about the presence of P.Ws. 2, 3 and 4 at the scene of occurrence. Furthermore, the prosecution had cited P.W.6 one Uthandaraman a Home Guard as a person who has witnessed the occurrence. But strangely P.Ws. 2, 3, 4 and 6 who are stated to be the eye-witnesses to the occurrence have not supported the prosecution case and they were treated as hostile.

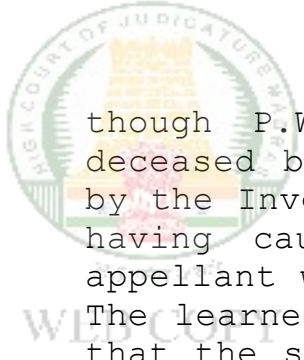
22. Further, even as per the evidence of P.W.1, there are contradictory versions with regard to the vehicle of the deceased at the time of occurrence. At one point of time, P.W.1 had stated that the occurrence had happened while the deceased was holding the vehicle and attempted to start the vehicle and at another point of time, P.W.1 had stated that the deceased was standing 10 feet away from the vehicle. But strangely no bloodstains were found on the vehicle thereby discrediting the evidence of P.W.1 with regard to the story of the deceased going to the workshop of PW2 to take back the vehicle left there for repairing.



23. The learned counsel for the appellant/accused further contended that there were grave doubts with regard to recovery of M.O.4, M.O.6 and M.O.7 namely the Aruval, shirt and lungi worn by the appellant/accused. As per the prosecution the accused was stated to be arrested on the next day at 4.00 p.m., near Kalugumalai Bus Stand. It is the admitted evidence of the witnesses for recovery and arrest P.W 7 that Kalugumalai Bus Stand is on the route connecting Kovilpatti with Sankarankoil, Rajapalayam, Sivakasi well connected with the nearby towns and there would be buses at every 10 minutes and that there were people present at the time of arrest and that he had admitted that the Investigating Officer did not call anybody available from the public or the persons from Kazhugumalai Bus Stand. Further he had admitted that the Investigating Officer was present at Kazhugumalai Bus Stand even before he could reach there. Further it was really strange and highly unbelievable that a person who is stated to have committed a murder on the previous day would be loitering in a busy bus stand with bloodstained dresses till the next day evening making the presence of the appellant/accused highly unnatural and thereby making the arrest, confession and recoveries suspicious and doubtful. Further, M.O.4 / Aruval was recovered from a dry Odai (Channel) behind Amalraj Match Factory and that too it is the admission of P.W.7-V.A.O. that it is a place where lot of people would be available.

24. The learned counsel for the appellant / accused further submitted that it was the evidence of P.W.9 / Doctor who conducted postmortem on the body of the deceased that there is a possibility that the injuries on the deceased would have been caused by 2 or more weapons and thereby suggesting that two or more persons would have committed the offence, whereas the respondent had falsely implicated the appellant and he further contended that though generally, there cannot be uniformity in human reactions it has to be borne in mind that if the conduct of the witnesses is so unnatural and is not in accordance with the acceptable human behaviour, the testimony of the witnesses become questionable and thereby it has to be discarded and while taking into consideration the behaviour and conduct of P.W.1 it was thoroughly unnatural and unbelievable. Further, in this case there is a delay in all the 161(2) Cr.P.C statements and other material documents reaching the court and when no plausible or reasonable explanation had been given by the Investigating Officer for such a delay the prosecution case becomes highly doubtful since by the delay there was ample chance for the prosecution to tamper with the statement of witnesses and all relevant documents so as to fabricate and web a false story to suit the prosecution.

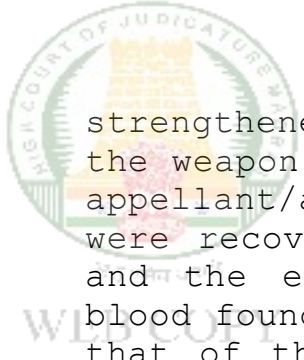
25. The learned counsel for the appellant / accused further contended that no witness have been examined to prove the motive of enmity between the appellant and the deceased and further



though P.W.1 had admitted about several enmities against the deceased by several other persons no investigation had been done by the Investigating Officer to rule out the possibility of others having caused the death of the deceased and prove that the appellant was the only person who had enmity against the deceased. The learned counsel for the appellant / accused further contended that the scene of occurrence being a place away from the house of P.W.1, there was no reason for the presence of P.W.1 at the relevant time and he being in a status of a chance witness and when no proper reasons had been given for his presence at the scene of occurrence, his testimony should be scrutinized with utmost caution. In the above circumstances, the learned counsel for the appellant / accused contended that it is clear that the evidence of P.W.1 is in the nature of one which is neither wholly reliable nor wholly unreliable and thereby the testimony of P.W.1 being not reliable, not trustworthy, not cogent and not being duly corroborated by other witnesses is legally inadmissible and the conviction of the appellant / accused based on such unreliable testimony is illegal and prayed for acquitting the appellant / accused.

26. The Counsel for the appellant / accused in conclusion contended that the Trial Court deviated from the well laid principles by the Apex Court regarding acceptability of uncorroborated testimony of solitary witness in convicting the accused without there being any legal evidence and thereby committed grave error.

27. Per contra, the learned Additional Public Prosecutor submitted that it is a day light murder where the deceased was indiscriminately attacked by the appellant with Aruval in a gruesome manner and that the head of the deceased was disentangled and further P.W.1 is the father who had gone behind his son had witnessed the occurrence and he is a natural witness and he has spoken about the occurrence cogently and convincingly and that immediately after the occurrence he had preferred a complaint to the respondent police based on which investigation has been done. Though the other independent witnesses who were stated to be eye-witnesses have not supported the prosecution case and treated hostile it does not affect the prosecution case since the evidence of P.W.1 is cogent and vivid with regard to the incident and thereby the prosecution has proved its case by evidence of the solitary evidence of P.W.1 who is the eye-witness to the occurrence and it does not suffer merely because the other eye-witnesses have been treated hostile. The conduct of P.W.1 was very natural and that behaviour and conduct of human being will vary from person to person and generally when the head of a person had been disentangled, nobody will dare to go near the body out of fear and that such being the case the conduct of P.W.1 was natural. Further, the case of the prosecution has been

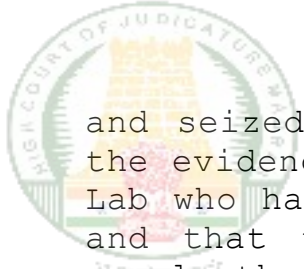


strengthened by arrest of the appellant / accused and recovery of the weapon (M.O.4) used for the commission of the offence from the appellant/accused and the bloodstained dresses worn by the accused were recovered and they have been subjected to chemical analysis and the evidence of P.W.10 Scientific Officer proves that the blood found on the dresses of the appellant / accused matches with that of the deceased and thereby the prosecution has proved the case beyond reasonable doubt. The learned Additional Public Prosecutor further contended that several judgments of the Apex Court has held that conviction can be based on the evidence of a solitary witness if it inspires confidence in the mind of the court and he further submitted that since the evidence of P.W.1 instilled and inspired the confidence in the mind of the trial Judge, he had rightly convicted the accused and thereby prayed for confirming the judgment of the trial court.

28. In response to the above submissions the learned counsel for the appellant / accused contended that the trial Judge erred in convicting the appellant / accused based on the solitary evidence of P.W.1. and to sum up his arguments the counsel submitted that the testimony of P.W.1 is not only self-contradictory, the conduct and the lacunas in the testimony would clearly prove that P.W.1 would not have been present at the scene of occurrence and that the manner in which P.W.1 had spoken about the attack made by the appellant/accused on the deceased does not tally with the medical evidence regarding the injuries suffered by the deceased and further the conduct and manner of P.W.1 in lodging the complaint immediately after the occurrence does not seem to be natural and that though several offices and shops have been shown in the rough sketch on both sides of the place of occurrence the respondent had failed to bring in any independent witness and that the specific named witnesses who as per the evidence of P.W.1 have been stated to be present at the scene of occurrence have not supported the prosecution case. Furthermore, the unexplained delay in sending the statement of witnesses and other relevant documents to the court throws cloud of doubt on the prosecution case.

29. Heard the learned counsel for the appellant / accused as well as the learned Additional Public Prosecutor for the State and gone through the evidence of the witnesses as well as the Judgment of the Court below and the materials on record.

30. Here is a case which clings on the sole testimony of P.W.1, who is the father of the deceased projected by the prosecution as eyewitness, the testimony of P.W.7 - Prithiviraj / Village Administrative Officer, who has spoken about the seizure of M.O.1 / bloodstained sand, M.O.2 / sample sand, M.O.3 / one pair bloodstained chappal, M.O.4 / Aruval, M.O.5 / TVS-XL-67-6542, M.O.6 / shirt and M.O.7 / lungi worn by the appellant / accused



and seized at the time of arrest of the appellant / accused and the evidence of P.W.10 Assistant Director of the Regional Forensic Lab who had testified 7 items which were sent to him for analysis and that the bloodstains were detected on items 1,2,3,4,6&7 namely the earth mixed with stones and vegetable matter, a pair of synthetic sandals, shirt, lungi and another shirt and lungi (stated to have been worn by the appellant / accused at the time of arrest) and that the blood group of the above items were detected to be human blood belonging to A group and that the blood sample taken from the deceased during the postmortem also belonged to the the same A group.

31. Before delving into considering and analyzing the facts of the case on hand we deem it necessary to refer to the following decisions of the Hon'ble Apex Court with regard to the principles laid down regarding acceptability and reliability of uncorroborated testimony of a solitary witness in a prosecution case to arrive at the guilt of the accused.

32. In **Kartik Malhar vs. State of Bihar, reported in (1996) 1 SCC 614** , the Honourable Supreme Court has held as follows:-

2. "The well-known maxim that "Evidence has to be weighed and not counted" has been given statutory placement in section 134 of the Indian Evidence Act which provides us under :

"134. No particular number of witness shall in any case be required for the proof of any fact."

3. This section marks a departure from the English law where a number of statutes still prohibit convictions for certain categories of offences on the testimony of a single witness. This difference was noticed by the Privy Council in *Mahamed Sugul Esa Mamasah Rer Alalah v. The King*, A.I.R. (1946) P.C, 3 wherein it was laid down as under :

"It was also submitted on behalf of the appellant that assuming the unsworn evidence was admissible the court could not act upon it unless it was corroborated. In England, where provision has been made for the reception of unsworn evidence from a child, it has always been provided that the evidence must be corroborated in some material particularly implicating the accused. But in the Indian Act there is no such provision and the evidence is made admissible whether corroborated or not. Once there is admissible evidence a court can act upon it; corroboration unless required by statute goes only to the weight and value of the



evidence. It is a sound rule in practice not to act on the uncorroborated evidence of a child, whether sworn or unsworn but, this is a rule of prudence and not of law."

4. The Privy Council decision was considered by this Court in *Vadivelu Thevar v. The State of Madras*, A.I.R. (1957) S.C. 614 in which it was observed as under : -

"On a consideration of the relevant authorities and the provisions of the Evidence Act. the following propositions may be safely stated as firmly established:

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness out ways the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon for example, in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is Or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this a much depends upon the judicial discretion of the Judge before whom the case comes.

In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the Court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act, has categorically laid it down that no particular number of witnesses shall, in any case, be required for the proof of any fact'. The Legislature determined, as long ago as 1872 presumably after due consideration of the pros and cons. that, it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses."

This Court further observed as under :

"It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence



where determination of guilty depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused may be proved by the testimony of a single witness, the innocence of the accused person may be established on the testimony of the single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the Court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories.

namely :

- (1) wholly reliable :
- (2) wholly unreliable:
- (3) neither wholly reliable nor wholly unreliable.

In the first category of proof, the Court should have no difficulty in coming to its conclusion either way - it may convict or may acquit on the testimony of a single witness, if it is found to be above approach of suspicion of interestedness, incompetence of subordination. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subordination of witnesses.

Subordinate courts may arise and do arise where only a single person is available to give evidence in



support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is feasible and free from all taints which tend to render oral testimony open to the suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution."

5. The above decision has since been followed in *Ramratan and Others v. The State of Rajasthan*, A.I.R. (1962) S.C. 424; *Guli Chand and Others v. State of Rajasthan*, A.I.R. (1974) S.C. 276; *Badri v. State of Rajasthan*, A.I.R. (1976) S.C. 560; *Vanula Bhushan @ Venuna Knshnan v. State of Tamil Nadu*, A.I.R. (1989) S.C. 236 and in *Jagdish Prasad v. State of M.P.*, A.I.R. (1994) S.C. 1251.

6. Some other cases of this Court in which the question of sole witness constituting the basis of conviction or otherwise has been considered are *State of Haryana v. Manoj Kumar*, [1994] 1 SCC 495; *Brij Basi Lal v. State of M.P.*, [1991] Suppl. 1 SCC 200; *Jai Prakash v. State, Delhi Administration*, [1991] 2 SCC 379; *Peodireddi Subbareddi v. State of Andhra Pradesh*, AIR (1991) SC 1356; *Java Ram Shiva Tagore v. State of Maharashtra*, [1991] Suppl. 2 SCC 677 AIR (1991) SC 1735; *Anil Pukhan v. State of Assam*, AIR (1993) SC 1462 and *Ram Kumar v. State of U.P.*, AIR (1992) SC 1602.

7. On a conspectus of these decisions, it clearly comes out that there has been no departure from the principles laid down in *Vadivelyu Thevar's* case (*supra*) and, therefore, conviction can be recorded on the basis of the statement of single eye witness provided his credibility is not shaken by any adverse circumstances appearing on the record against him and the Court, at the same time, is convinced that he is a truthful witness. The Court will not then insist on corroboration by any other eye witness particularly as the incident might have occurred at a time or place when there was no possibility of any other eye witness being present. Indeed, the Courts insist on the quality, and, not on the quantity of evidence."

33. In *Joseph vs. State of Kerala* reported in (2003) 1 SCC 465, the Hon'ble Apex Court held as follows:

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"13. To our mind, it appears that the High Court did not follow the aforesaid standard but went on



to analyze evidence as if the material before them was given for the first time and not in appeal. Section 134 of the Indian Evidence Act provides that no particular number of witnesses shall in any case be required for the proof of any fact and, therefore, it is permissible for a court to record and sustain a conviction on the evidence of a solitary eyewitness. But, at the same time, such a course can be adopted only if the evidence tendered by such witness is cogent, reliable and in tune with probabilities and inspires implicit confidence. By this standard, when the prosecution case rests mainly on the sole testimony of an eyewitness, it should be wholly reliable. Even though such witness is an injured witness and his presence may not be seriously doubted, when his evidence is in conflict with other evidence, the view taken by the trial court that it would be unsafe to convict the accused on his sole testimony cannot be stated to be unreasonable."

34. In *Kunju alias Balachandran vs. State of Tamil Nadu* reported in (2008) 2 SCC 151, the Hon'ble Apex Court has held as follows:-

"In *Vadivelu Thevar V/s. State of Madras*, AIR 1957 SC 614 this Court had gone into this controversy and divided the nature of witnesses in three categories, namely, wholly reliable, wholly unreliable and lastly, neither wholly reliable nor wholly unreliable. In the case of the first two categories this Court said that they pose little difficulty but in the case of the third category of witnesses, corroboration would be required. The relevant portion is quoted as under: (AIR p. 619, paras 11-12)

"Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable. In the first category of proof, the court should have no difficulty in coming to its conclusion either way it may convict

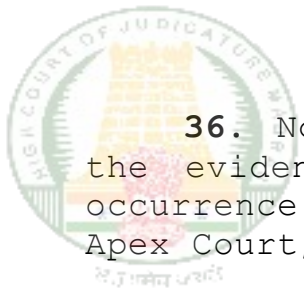


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or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses."

10 Vadivelu Thevar case (supra) was referred to with approval in the case of Jagdish Prasad V/s. State of M.P., AIR 1994 SC 1251. This Court held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Sec. 134 of the Indian Evidence Act, 1872 (in short "the Evidence Act"). But, if there are doubts about the testimony the courts will insist on corroboration. It is for the court to act upon the testimony of witnesses. It is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Sec. 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise."

35. This is a case where all the named eye witnesses who are stated to have been present at the scene of occurrence along with PW1 had turned hostile and the prosecution case thereby clings on the sole testimony of P.W.1, who is the father of the deceased and the testimony of P.W.7 - Prithiviraj / Village Administrative Officer, who has spoken about the seizure of M.O.1 / bloodstained sand, M.O.2 / sample sand, M.O.3 / one pair bloodstained chappal, M.O.4 / Aruval, M.O.5 / TVS-XL-67-6542, M.O.6 / shirt and M.O.7 / lungi worn by the appellant/accused at the time of arrest and the testimony of P.W-10, Assistant Director of Regional Forensic Lab who had opined that the blood group found on the dresses worn by the accused and the blood group of the accused belongs to the same 'A' group.



36. Now, while analyzing the facts of the case on hand and the evidence of the sole witness - P.W.1 with regard to the occurrence in the context of the above judgments of the Hon'ble Apex Court, what is to be seen is:

- 1) Whether the evidence of the solitary witness is cogent, reliable, trustworthy and inspires confidence?
- 2) Whether the trial court is right in convicting the accused based on the evidence of the solitary witness? and
- 3) Whether the prosecution has proved its case beyond all reasonable doubts and suspicion with available materials and attended circumstances?

37. Admittedly, the occurrence had happened away from the house of P.W.1 and also in a busy locality and as per the Observation Mahazar Ex.P.3, there are several shops and offices on both sides. P.W.1 is stated to have followed his son / deceased, when he had gone to take back his two wheeler left at the two wheeler workshop belonging to Rajendran (Examined as P.W.2) for repair and the incident had happened in front of the shop of P.W.2 while the deceased was pushing the two wheeler towards the middle of the road after taking delivery. Though the house of PW1 is away from the scene of occurrence no explanation had been given by P.W.1 for being present at the scene of occurrence at the relevant time. Further P.W.1, in the complaint / Ex.P1, had specifically stated that the incident is known to one Rasu, son of Karuppasamy Thevar and others who were present there. During his testimony in the Court, he had specifically stated that the incident was known to Rajendran, Mariappan, Subramanian and others who were present near the workshop. The named persons Rajendran, Mariappan and Subramanian were examined as P.Ws.2, 3 and 4. Strangely, though all the witnesses have testified that they know P.W.1, the deceased and the appellant/accused and also that they know each other they have not supported the prosecution with regard to the incident and thereby they have been treated as hostile. The reason stated by P.W.1 for his son / the deceased to go the place of occurrence was to take back his two wheeler left for repairing at the workshop of P.W.2. With regard to this aspect, P.W.2 had specifically deposed that the day of occurrence being Sunday his shop was closed and that he was not present at the scene of occurrence. The evidence such being so makes the presence of PW1 at the scene of occurrence suspicious.

38. Further, coming to the conduct of the P.W.1, it is the evidence of P.W.1, that the occurrence had happened right in front of him and that he was present just 20 feet behind his son and that his son was caught hold of by the appellant / accused when the attack was made on his son / deceased. With regard to the nature of injuries stated to have been inflicted on the deceased P.W.9-Dr.Mariammal, (Postmortem Doctor), she had noted



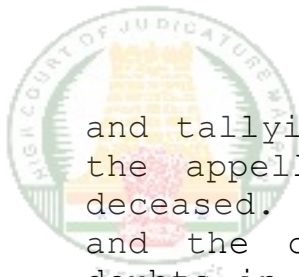
the following injuries on the deceased:

1. Head was disentangled from the body due to injuries in the back of neck, lower jaw, front of the neck exposing the oral caring and brounstem region.
2. The lower part of the neck which was open showed all the major blood vessels, trachea, esophagus covered & blood clot.
3. Left forearm was severed about 2 inches about the wrist.
4. The cut portion of the Left hand showed 2 lacerated wounds 2 x 1.1 cm. each in the palm.
5. Two lacerated wounds in front left shoulder 6 cm x 2 x 2 cm.
6. A lacerated wound in the back of Left shoulder 5 x 2 x 2 cm.
7. The right hand mid finger and ring finger were severed.
8. A lacerated wound in the back of Right thumb 3 x 1 x 1 cm.
9. A lacerated wound in the Right forearm 5 x 2 x 1 cm.

The nature of the injuries suffered by the deceased would go to show that the incident could not have happened in such a manner as projected by P.W.1 that the appellant/accused caught hold of the deceased and inflicted the injuries. Further, the conduct of P.W.1 after the occurrence seems to be unnatural, because he had stated that P.Ws. 2, 3, and 4 were present at the scene of occurrence, whereas P.W.1 had testified that he had immediately asked an unknown boy standing there to write the complaint and that thereafter he had gone to the Police Station to give the complaint.

39. There is also a contradiction with regard to the registration of the case. At the earlier point of his testimony in court, P.W.1 had stated that he had taken the complaint written by an unknown boy to the Police Station, whereas in the later part of his testimony, he had stated that after he went to the Police Station, he gave a oral complaint, which was reduced into writing by the Police Constable and that he had signed in the complaint. This evidence is self-contradictory. Furthermore, though P.W.1 had stated that the occurrence was known to one Rasu son of Karrupasamy Thevar and others who were present there, strangely Rasu, son of Karuppasamy Thevar, was not examined in the Court and the unknown boy, who is stated to have written the complaint, was also not identified and not examined before the Court. Further, no explanation had been given by P.W.1 for his presence in the place of occurrence at the particular time. So, the above factors make the evidence of P.W.1 suspicious and doubtful.

40. Moreover, when the other witnesses have turned hostile, as a rule of utmost caution and prudence we have to see whether the prosecution was able to prove the case based on the other available materials and attended circumstances beyond all reasonable doubt. The next circumstance projected by the prosecution is regarding the arrest, recovery of Material Objects



and tallying of the blood group available on the dresses worn by the appellant / accused with that of the blood group of the deceased. With regard to the arrest of the appellant / accused and the consequent recovery from him, there are also several doubts in the prosecution case. M.O.4 / Aruval is stated to have been recovered from an Odai(Channel) behind Amalraj Match Factory. It is the specific evidence of P.W.7 / V.A.O. that the Odai was dry and there was no water in it. Strangely the Aruval / M.O.4 did not contain any bloodstain and moreover, the Aruval / M.O.4 was not shown to P.W.1 and was not identified by P.W.1 during his evidence in the Court. As per the case of prosecution, the evidence of V.A.O./P.W.7 and Investigating Officer / Sivakumar (P.W.15) with regard to the arrest of the appellant/accused and recovery of M.Os., is contradictory in nature. Further, the appellant / accused was stated to be arrested on the next day i.e., about 24 hours later in a busy locality i.e., near Kalugumalai Bus Stand, where admittedly several people were available and the case as projected by the prosecution that the appellant / accused was wearing bloodstained shirt and lungi at the time of arrest seems to be unnatural and improbable. With regard to the appreciation of evidence regarding reaction, conduct and behaviour of witnesses, the Apex Court in **Mohan Singh vs. Prem Singh**, reported in (2002) 10 SCC 236, while taking into consideration the facts in the case that the deceased was attacked on the way and the eyewitnesses who were following the deceased on that way did not intervene in the attack or rush to the village for help held that the subsequent conduct of the witnesses to be unnatural and at the same time, in respect of the conduct and behaviour of the accused before or after the offence, the Supreme Court in the decision in **Varkey Joseph vs. State of Kerala** reported in 1993 Supp. 3 SCC 745, has held that the normal conduct of the accused would be to avoid anybody noticing him either before or after committing the offence. Therefore the prosecution case that the accused was wearing the same bloodstained clothes at the time of arrest on the next day almost after about 24 hours and that too in a busy locality near a Bus Stand seems highly unnatural and thereby making the evidence of the prosecution regarding arrest , confession and recovery highly suspicious and doubtful.

41. Further, no evidence had been let in by the prosecution to prove the motive for the murder whereas it is the admitted case of P.W.1 that not only one person, but there were several other persons, who were in inimical terms with the deceased and those animosity and grudge seem to be graver than the one shown as a motive for this occurrence.

42. Further, as per the case of the appellant / accused, all the case properties have been received by the court on 9.8.2011, Exs.P3 to P5 namely, athachi for recovery of Material Objects have



been received by the Court on 19.7.2011 and the other documents namely, rough sketch, inquest report, confession statement, statement of witnesses recorded under Section 161 Cr.P.C. and all other material documents had been sent to the jurisdictional Magistrate Court on 28.01.2013, after a period of 1 ½ years and no explanation had been offered by the prosecution for the delay in sending those material documents to the Court. Further, the samples have been sent to the Forensic Science Lab only on 16.08.2011. The unexplained delay creates doubt with regard to the prosecution case since the delay in sending the statements and other material documents often results in embellishments thereby raising doubts with regard to their preparation. On account of the delay, the documents not only get bereft of the advantage of spontaneity, but there is every danger of introduction of coloured versions creeping in and there could be possibility of exaggeration and concoction as a result of deliberation and consultation.

43. In the combined consideration of the above facts and circumstances, the occurrence having happened in a busy locality and when no other witness has supported the prosecution case, we find that the evidence of the solitary witness namely P.W.1 is in total conflict with the evidence of the other witnesses and thereby making the prosecution case doubtful.

44. Before arriving at a final decision, while considering the nature of the offence, it is not in doubt that the offence had been committed in a gruesome and brutal manner. However law does not permit the court to punish the accused on the basis of a moral conviction or suspicion alone and it is the basic tenet of Criminal Jurisprudence that an accused can be convicted only on legal evidence and not on surmises and conjecture. To convict a person on available legal evidence the court has to ensure itself whether the prosecution had proved the case beyond all reasonable doubt.

45. In **Paramjeet Singh alias Pamma vs. State of Uttarakhand, reported in (2010) 10 SCC 439**, the Honourable Supreme Court has held that:

"Standard of proof

10. *A criminal trial is not a fairy tale wherein one is free to give flight to one's imagination and fantasy. Crime is an event in real life and is the product of an interplay between different human emotions. In arriving at a conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of*

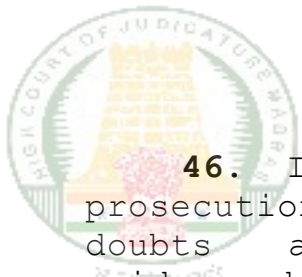


witnesses. Every case, in the final analysis, would have to depend upon its own facts. The court must bear in mind that "human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions". Though an offence may be gruesome and revolt the human conscience, an accused can be convicted only on legal evidence and not on surmises and conjecture. The law does not permit the court to punish the accused on the basis of a moral conviction or suspicion alone. "The burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence." In fact, it is a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof required, since a higher degree of assurance is required to convict the accused. The fact that the offence was committed in a very cruel and revolting manner may in itself be a reason for scrutinizing the evidence more closely, lest the shocking nature of the crime induces an instinctive reaction against dispassionate judicial scrutiny of the facts and law. (Vide *Kashmira Singh v. State of M.P.* [AIR 1952 SC 159 : 1952 Cri LJ 839, *State of Punjab v. Jagir Singh* [(1974) 3 SCC 277: 1973 SCC (Cri) 886 : AIR 1973 SC 2407, *Shankarlal Gyarasilal Dixit v. State of Maharashtra* [(1981) 2 SCC 35 : 1981 SCC (Cri) 315 : AIR 1981 SC 765, *Mousam Singha Roy v. State of W.B.* [(2003) 12 SCC 377] and *Aloke Nath Dutta v. State of W.B.* [(2007) 12 SCC 230 : (2008) 2 SCC (Cri) 264].

11. In *Sarwan Singh Rattan Singh v. State of Punjab* [AIR 1957 SC 637 : 1957 Cri LJ 1014] this Court observed: (AIR p. 645, para 12)

"12. ... considered as a whole the prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence [before an accused can be convicted]."

12. Thus, the law on the point may be summarized to the effect that in a criminal trial involving a serious offence of a brutal nature, the court should be wary of the fact that it is human instinct to react adversely to the commission of the offence and make an effort to see that such an instinctive reaction does not prejudice the accused in any way. In a case where the offence alleged to have been committed is a serious one, the prosecution must provide greater assurance to the court that its case has been proved beyond reasonable doubt."



46. In view of the above discussions we find that the prosecution has failed to prove its case beyond all reasonable doubts and the trial Court without proper appreciation of evidence had erred in convicting the appellant / accused on the basis of the uncorroborated solitary evidence of P.W.1 which we find is in conflict with other evidence and thereby shrouding the prosecution case with doubts and suspicion entitling benefit of doubt to the appellant/accused.

47. In the result, the criminal appeal is allowed and the Judgment, dated 20.03.2015, made in S.C.No.98 of 2013, by the learned III Additional District and Sessions Judge, Tirunelveli, is hereby set aside and the appellant / accused is acquitted of all the charges. The bail bond, if any, executed by the appellant / accused shall stand cancelled. The fine amount, if any paid, shall be refunded to the appellant / accused. It is submitted that the appellant / accused is in prison. The appellant / accused shall be set at liberty forthwith, if he is no longer required in connection with any other case.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To:

1. The Principle District Judge, Tirunelveli.
2. The III Additional District and Sessions Judge, Tirunelveli.
3. The III Additional District Sessions Judge through
The Principle Sessions Judge, Tirunelveli.
4. The Judicial Magistrate, Sankarankovil, Tirunelveli.
5. The Judicial Magistrate through
The Chief Judicial Magistrate,
Sankarankovil, Tirunelveli.
6. The District Collector, Tirunelveli.
7. The Superintendent of Central Prison, Palayamkottai.
8. The Director General of Police, Chennai.



9. The Inspector of Police, Sankarankoil Taluk Circle,
Kuruvikulam Police Station, Tirunelveli District.

10. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

11. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

12. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

KRK/GR

VB/SV/MMS/SAR1/17/01/2018/25P/15C

JUDGMENT IN
Crl.A. (MD) No.344 of 2016
21.12.2017