

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.06.2018	Pronounced on : 24.07.2018
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CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA
AND
THE HON'BLE MRS. JUSTICE S.RAMATHILAGAM

Referred Trial No.2 of 2018
and Criminal Appeal No.102 of 2018

R.T.No.2 of 2018:

State Rep. by,
The Inspector of Police,
Mangalam Police Station,
Thiruvananthapuram
(Crime No.139/2013) ... Complainant

Vs.

P.Manikandan ... Accused

Criminal Appeal No.102 of 2018:

P.Manikandan ... Appellant / accused

Vs.

State Rep. by,
The Inspector of Police,
Mangalam Police Station,
Thiruvananthapuram
(Crime No.139/2013) ... Respondent/complainant

Referred Trial numbered under Section 366 of the Criminal Procedure Code to go into the question of confirmation of the death sentence awarded by the Fast Track Mahila Court, Thiruvannamalai, in S.C.No.102 of 2015, dated 31.1.2018.

Criminal Appeal No.102 of 2018 filed under Section 374(2) Cr.P.C. to call for the records in S.C.No.102 of 2015 on the file of the learned Fast Track Mahila Court, Thiruvannamalai, and to set aside the judgment and conviction passed in S.C.No.102 of 2015, by judgment dated 31.01.2018.

In Referred Trial:

For the State : Ms. M.Prabhavathi, APP.,
For Accused : Mr.N.R.Elango, Sr. Counsel, for,
M/s. Aruna Elango.

In Criminal Appeal:

For Appellant/accused : Mr.N.R.Elango, Sr. Counsel, for,
M/s. Aruna Elango
For Respondent
/complainant : Ms. M.Prabhavathi, APP.,

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by S.Vimala, J.,)

There is a dividing line between "may be true" and "must be true", which is represented by conjectures at one end of the spectrum and concrete conclusions on the other. Ignoring this dividing line, is it proper for the trial court to have awarded the death penalty, when the circumstantial evidence did not support the hypothesis that it is only this accused and this accused alone committed murder of the deceased, and when the evidence did not even signify that the hypothesis "may be true", is it right for the trial court to award a death sentence, is the issue involved in this Appeal.

2. The Sessions Court, i.e., Fast Track Mahila Court, Thiruvannamalai, found the accused Manikandan guilty under Sections 364(A) and 302 IPC and in respect of the offence under Section 364(A) IPC, he was sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo Rigorous Imprisonment for three months and for the offence punishable under Section 302 IPC, he was sentenced to death.

3. Submitting the entire records in S.C.No.102 of 2015 to this Court, the trial Court has referred the proceedings for confirmation of death sentence under Section 366 of the Criminal Procedure Code.

4. The brief facts, as relied upon by the prosecution, are as follows:-

4.1. The accused and the father of the deceased (hereinafter referred to as P.W.1) were known to each other and their relationship soared to the extent of exchanging money. The accused used to borrow money from P.W.1 and in fact, had borrowed a sum of Rs.5,00,000/- from P.W.1 and on account of loss in the brick making business, he was not able to repay it. The accused felt offended, when P.W.1 made persistent demands

for return of money. The accused developed a sense of revenge.

4.2. P.W.1-Paramasivam and P.W.2-Usha had a female child, by name, Pachaiammal, which was four years old. The deceased was studying in the school run by P.W.3-Sakthi.

4.3. On 13.06.2013, the accused kidnapped the deceased from Mangalam Gandhi Matriculation School, by using his Hero Honda Splendor Plus motorcycle, bearing Registration No.TN25-L-2391 and after murdering her, threw away the dead body in the Well of one Sundaramurthy. The child was regularly taken to school by P.W.5-Chandrasekar, the van driver. In the absence of P.W.5, some times, the accused used to take the child to and from the school.

4.4. On 10.06.2013, the deceased was promoted from L.K.G. to U.K.G. On 13.06.2013, i.e. on the reopening day, at about 01.30 pm, she was found missing from the school, about which, the parents were informed immediately. The father rushed to the school. Even while rushing to the school, the father of the deceased informed the accused that his child was missing and that he wanted his assistance to trace her out. The accused came belatedly. On reaching the school, he was informed by P.W.3-Sakthi and P.W.19-Yokesh that the deceased had been taken away from the school by the accused. However, the accused came to the place after two hours and he was also pretending to be involved in the search for the deceased and as they were not able to trace out, a complaint was lodged under Ex.P-1 to the jurisdictional police concerned.

4.5. The case was registered in Mangalam Police Station Cr.No.139 of 2013 under the head of 'child missing' and the First Information Report is Ex.P-7. Nearly a week after, i.e. on 19.06.2013, the village people informed the father of the deceased about the floating of a dead body in a Well at Aarpakkam and the father, plunging into the Well, identified that the body is that of his daughter (found out from the uniform dress of the deceased) and with the assistance of Fire and Rescue Services Personnel, the body was taken out. The father of the deceased had lodged another complaint in Ex.P-2.

4.6. Based on the said complaint, the case of Child Missing was altered into kidnapping for ransom and murder. The body of the deceased, after inquest, was sent for postmortem. The inquest report is Ex.P-12.

4.7. After completion of the postmortem, the dresses worn by the deceased, blue colour skirt, white colour shirt and underwear (M.Os.5 to 7) were recovered. The postmortem report is Ex.P-5.

4.8. The accused was arrested on 22.06.2013 at about 11.00 am at Thiruvannamalai Avalapettai Road and the confession statement given by him was recorded under Ex.P-13 and based on that, Herohonda Splendor Plus motor cycle (M.O.8) was recovered under Ex.P-14-mahazar. The identity card of the accused M.O.1 was recovered from the northern bank of the Well under Ex.P-15-mahazar.

4.9. From the sugarcane field situated to the north of the Well, the identity card of the deceased, notebook, school book, pencil box, tiffen box and water bottle (M.Os.2 to 4) were recovered under Ex.P-16-mahazar.

4.10. After examining Doctor, Karthikeyan (P.W.14) who conducted postmortem and after concluding the investigation, final report was laid.

5. The prosecution, in order to establish the offence against the accused, has relied upon the evidence of P.Ws.1 to 20, Exs.P-1 to P-16 and M.O.1 to M.O.8. Out of those witnesses, P.W.7-Elumalai, P.W.8-Vediappan, P.W.9-Kalaiarasan, P.W.10-Manikandan, P.W.11-Deeran, P.W.12-Rajendra Chozan (Village Administrative Officer) and P.W.13-Kuppan (Village Assistant) have been treated as hostile by the prosecution.

6. P.W.4-Venkatesan is the witness who has spoken about the financial transaction between the accused and P.W.1 and also to the fact that both of them were friends.

6.1. P.W.6-Durai is a hearsay witness, who has spoken about the fact that the Villagers were gossiping about death of Pachaiammal.

6.2. P.W.7 is the witness (Elumalai) who is relied upon by the prosecution to speak about the financial transaction between the accused and P.W.1 and the challenge of the accused to wreck revenge against the father of the deceased. P.W.7 is said to have stated that the accused told him that he is on the way to Gandhi Matriculation School, etc., But his evidence before the Court is that he was not examined by the Police at all and he had no knowledge about the occurrence.

6.3. P.W.8-Vediappan would reiterate the version of P.W.7 and he has also been treated as hostile.

6.4. P.W.9-Kalaiyarasan is the witness, who is relied upon by the prosecution to speak about the accused taking away the child from the school in the hero-honda motor cycle. But his evidence before the court is that, on the day of occurrence, he

was one among the persons, who were in search of the deceased girl in the school premises.

6.5. P.W.10-Manikandan is the witness, relied upon by the prosecution to speak about the financial transaction between P.W.1 and the accused and also regarding the accused taking away the deceased girl from the school. But his statement before the Court is that he did not know anything about the occurrence and that he was not examined by the Police.

6.6. P.W.11-Dheeran is the witness who speak about the accused having been seen along with the deceased just prior to death. But during evidence, he stated that even though he heard about the occurrence, he did not see the accused.

6.7. P.W.12-Rajendra Chozan-Village Administrative Officer is the witness to speak about: (a) the arrest of the accused; (b) the deadbody having been found in the Well; (c) recovery of the identity card of the accused; and (d) recovery of material objects under mahazars. But he had been treated as hostile on the pretext that he did not speak anything about the recovery of herohonda motor cycle and the recovery of school bag, pencil box, slate, pencil, etc.,

6.8. P.W.13-Kuppan, Village Assistant, has spoken about the recovery of few articles and the arrest of the accused. But he had been treated as hostile as he has not supported the recovery of other articles and herohonda motor cycle.

7. The consideration of the evidence of those witnesses referred to supra would go to show that the theory of "last seen together", i.e., the accused and the deceased having been together at the last moment is not supported by evidence. For the alleged enmity between the accused and P.W.1, there is no evidence. For the alleged confession given by the accused also, there is no evidence.

8. The next issue is regarding cause of death.

8.1. So far as the cause of death is concerned, the report of the Forensic Sciences Laboratory under Ex.P-6 would rule out the presence of poison in the visceral samples examined, thereby establishes the fact that the death was not a result of poisoning.

8.2. The prosecution has not come out with any definite theory regarding the cause of death. Whether the death was due to homicidal violence and thereafter, dumping of the body into the well or it was accidental fall of the child or is it fall followed by drowning or due to any other mishap, is not established by the prosecution.

9. The learned counsel appearing for the accused submitted that there is no legal basis for convicting the accused and in fact, the finding regarding the guilt is based on 'no evidence' and therefore, the findings are perverse and the accused is entitled to be acquitted.

9.1. It is pointed out by the learned counsel appearing for the accused that the motive part of the occurrence, i.e, the accused borrowing money from the father of the deceased, the non-payment of the same by him, the alleged humiliation meted out to the accused by P.W.1 and the revenge in the mind of the accused to cause the murder of the deceased are not even whispered at the earliest point of time in the two complaints, namely, Exs.P-1 and P-2; those two complaints are also bereft of any details regarding the suspects or alleged perpetrators / potential culprits.

9.2. The perusal of the complaints under Exs.P1 and P2 did not even indicate that there had been suspicion regarding involvement of the accused in kidnapping and murder of the deceased. There is not even an allegation that it is only the accused who kidnapped the deceased from the school. One would normally expect that at least after giving the first complaint the enquiries would have revealed the involvement of some X or Y in the kidnapping and murder of the deceased and strangely and shockingly, the second complaint is also silent with regard to involvement of anybody in the episode. This material omission is a noticeable omission affecting the probabilities of the prosecution case under Section 11 of the Indian Evidence Act.

9.3. This important omission in the complaint and consequently, in the First Information Reports are conspicuous and it would affect the probability of the prosecution theory that it is only the accused who took away the child from the school and while they were together they were seen by prosecution witnesses. सत्यमेव जयते

9.4. It would be appropriate to read Section 11 of the Indian Evidence Act, which reads thus:-

"Section 11 - When facts not otherwise relevant become relevant.- Facts not otherwise relevant are relevant -

(1) if they are inconsistent with any fact in issue or relevant fact;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable."

9.5. From this provision, it is clear that the omission to name the accused in both the First Information Reports would make the evidence of two witnesses, namely, Sakthi and Yokesh, stating that on the first day (of missing itself) that they saw the accused taking away the child from the school, cannot be true and it would be highly improbable.

9.6. In fact, the registration of two FIRs, in respect of a single incident is irregular. There can be two FIRs pertaining to two different incidents / crimes. There can be two FIRs in respect of a case and a counter case. There can be two separate complaints in two different Police Stations for the offence arising out of one incident. For the same incident, two FIRs are not permissible. But the question is whether in respect of only one incident, there can be two FIRs? The answer is obviously, there can be one FIR in respect of a single incident. If the gravamen of the charges in the two FIRs - the first and the second - is, in truth and substance the same, registering the second FIR and making fresh investigation and forwarding report under Section 173 Cr.P.C. will be irregular and the court cannot take cognizance of the same. In this case, there are two FIRs in respect of single incident of missing. Even then, there is omission which is found to be a material omission affecting the probabilities of the version of P.W.3 and P.W.19.

10. The prosecution relies upon the evidence of P.W.3-Sakthi, a person from the school management and P.W.19-Yokesh, a student of the school as well as the relative of the deceased to speak about the fact that it is only the accused who took the deceased from the school premises.

10.1. The prosecution has conducted identification parade in order to show that P.W.19-Yokesh was able to correctly point out the accused as the person who took away the deceased. According to the learned counsel appearing for the defence, there is no necessity to conduct an Identification Parade, when actually, the accused is already known to P.W.19; the purpose of conducting Identification Parade remains unexplained; even assuming that there was such a necessity, P.W.19 was able to identify the accused only once and he was not able to identify the accused on other three rounds; therefore, the trial Court ought not to have relied upon the result of Identification Parade; the Identification Parade, which was conducted after 37 days of the arrest of the accused, can have no sanctity and therefore, it should not have been relied upon. These contentions are perfectly justified. The evidence of P.W.19 requires strict scrutiny as he being vulnerable as a child witness, being a relative, there is a possibility that he should have been compelled to speak about the participation of accused. Moreover, when the identification is long after the incident and as there was difficulty in identification, the evidence of

P.W.19 cannot be free from doubt.

10.2. The learned counsel appearing for the accused relied upon the decision reported in 2018 SCC Online SC 378 (Navaneetharishnan v. The State, by Inspector of Police) in order to support the contention that the evidence regarding the identification cannot be a substantive piece of evidence and it is only a corroborative piece of evidence and therefore, based on the evidence regarding the identification alone, conviction cannot be based upon.

This contention is acceptable and the argument is telltale.

10.3. Relying upon paragraph 22 of the same decision, it is contended that when the discovery of new fact is not the result of any confession, and in the absence of connecting link between the confession and the things recovered, the recovery at the behest of the accused will not have any material bearing on the facts of the case. In paragraphs 17 of the said decision, it has been held as follows:-

"17) It is a settled proposition of law that the identification parade of the accused before the court of law is not the only main and substantive piece of evidence, but it is only a corroborative piece of evidence. Regarding this, reliance can be safely placed on Rafikul Alam & Others vs. The State of West Bengal 2008 CrL. L.J. 2005 wherein it was held as under:-

"32....It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in Court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions when, for example, the Court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades do not constitute substantive evidence. Failure to hold a test identification parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification should be a matter for the Courts of fact. In appropriate cases it may accept the evidence of identification even without insisting upon corroboration"

10.4. From the reported decision, it is clear that when there is no substantive evidence implicating the accused, the corroborative evidence has no value, as there is nothing to corroborate.

10.5. Yet another decision relied upon by the learned counsel appearing for the accused is the one reported in (2016) 1 SCC 550 (Nizam and another v. State of Rajasthan); in the said decision, it has been held that the theory of last seen has to be applied taking into consideration the case of the prosecution in its entirety and keeping in mind circumstances that precede and follow the point of being so last seen; it is proper to look for corroboration. In paragraphs 14 and 18 of the decision, it has been held as follows:-

"14. Courts below convicted the appellants on the evidence of PWs 1 and 2 that deceased was last seen alive with the appellants on 23.01.2001. Undoubtedly, "last seen theory" is an important link in the chain of circumstances that would point towards the guilt of the accused with some certainty. The "last seen theory" holds the courts to shift the burden of proof to the accused and the accused to offer a reasonable explanation as to the cause of death of the deceased. It is well-settled by this Court that it is not prudent to base the conviction solely on "last seen theory". "Last seen theory" should be applied taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen.

18. In view of the time gap between Manoj left in the truck and the recovery of the body and also the place and circumstances in which the body was recovered, possibility of others intervening cannot be ruled out. In the absence of definite evidence that appellants and deceased were last seen together and when the time gap is long, it would be dangerous to come to the conclusion that the appellants are responsible for the murder of Manoj and are guilty of committing murder of Manoj. Where time gap is long it would be unsafe to base the conviction on the "last seen theory"; it is safer to look for corroboration from other circumstances and evidence adduced by the prosecution. From the facts and evidence, we find no other corroborative piece of evidence corroborating the last seen theory."

11. It is further contended by the learned counsel appearing for the accused that when P.W.19 has stated that he saw only the accused entering into the school and he did not see when he was going out of the school and therefore, there is no purpose in conducting the Identification Parade, as there is no positive evidence implicating the accused; rather, P.W.19 would state that when the police asked him to state, who are all the persons visiting his house, only during that time, he identified the accused.

11.1. A vital contention has been raised that the recovery

of the bag from the premises on the well is a planted one and it is supported by the prosecution witnesses, P.W.5, Chandrasekaran, himself.

11.2. When P.W.5-Chandrasekar, Van Driver, has stated that when he went to the school in search of the child, he was able to notice only the school bag and not the child. When P.W.5 would speak about the availability of the school bag in the school premises, the alleged recovery of the school bag, at a later point of time, from the vicinity of Well is highly doubtful and it should have been a planted one, as contended by the defence.

11.3. The next piece of evidence relied upon is the recovery of ID card of the accused and other articles belonging to the deceased from and around the scene of occurrence. It is contended by the learned counsel appearing for the accused that the material objects, which ought to have been recovered, were not recovered on the date of recovery of dead body and it is allegedly recovered only on the subsequent date, namely, on 22.06.2013 and therefore, the recovery is certainly manipulated.

11.4. The learned Additional Public Prosecutor appearing for the respondent would support the recovery by contending that the recovered articles were not available surrounding the Well and it is far away from the Well and therefore, there is every justification for the belated recovery.

11.5. The learned Additional Public Prosecutor would have made such a submission forgetting: (a) the difference between the Police Prosecutor and the Public Prosecutor; and (b) the importance of crime scene investigation.

11.6. The criminal investigation process must establish (a) commission of crime (b) corpus delicti (c) motive and (d) modus operandi.

11.7. The scene of crime is the richest source of clue materials. It is a meeting place for the criminals, the victims, the weapon of offence and the tools of the trade. While they come in contact with each other knowingly or unknowingly, they would leave traces and exchange traces. Therefore, proper identification, preservation/protection, search and documentation of the scene of occurrence are indispensable for ideal investigation.

11.8. Scientific method of investigation is indispensable, especially, when the traditional method of investigation has been found to be of less use. Quite often, the eye-witnesses who are the kingpins in the criminal justice system, often take sides and change colour, like a chameleon. The Traditional tools of proof in relying upon the account of eye-witnesses, confession, recoveries have become unreliable and ambiguous, more often bringing confusion than proving the offence.

11.9. The Investigating Officer should look for evidentiary clues which are often classified under five categories,

(i) Fruits of crime :- cash, ornament, document, stolen vehicles, stolen firearms, etc.

(ii) instrument of crime:- firearms, swords, stones, knives, cutters, jimmies, pen, pencil, papers, etc.

(iii) Exchanged objects:- marks, stains, paints, soil, oil, glass, grass, greases and other traces.

(iv) Victims of crime :- the injured, the dead, the pilfered items, the broken door or window, the soiled and stained clothes.

(v) Exemplars or specimens:- The incriminating evidentiary clues have to be identified and linked with the source of their origin. Exemplars or specimens or standards are, therefore, essential. They are collected along with the incriminating clues from the corresponding suspected sources, in the same way as the crime clues, whenever possible. They are processed with the same care and attention as the incriminating clues.

11.10. Without knowing the importance of scientific investigation, it is contended by the prosecution itself, that the recovery of deadbody on one day and recovery of other material objects on other day is justified by the prosecution. A shrewd Investigating Officer should be vigilant enough to look for objects regarding tool for the crime and the fruits of the crime in and around the scene of occurrence. If that is not done and if something else is sought to be done in the name of investigation, it cannot have any legal value. Therefore, the alleged recovery, based on the alleged confession, both of which, are not supported by the witnesses cannot be the foundation for conviction.

11.11. Needless to reiterate that the doubtful identification of the accused by P.W.19 alone cannot be the substantive evidence to justify the conviction of the accused.

12. So far as this case is concerned, the evidence regarding last seen together theory is very flimsy and it is unreliable. It is a clear case of the prosecution that the earliest statement of the school authorities to the father is that the deceased girl was missing. Right from the date of missing and even till the recovery of the dead body, no information was ever given to the Police stating that the deceased was seen in the company of the accused. Had it been the truth that the deceased was taken, from away from the school by the accused, either the school authorities or P.W.9 or anybody else, i.e., the alleged eye-witnesses would have informed the same either to the Police or to the father of the deceased. If it is so, the father would have stated so, either in the first complaint dated 13.06.2013 or in the second complaint dated 19.06.2013. When it is not so, the inference is that the theory of last seen together might have been introduced

at the later point of time, which is an outcome of an after thought.

13. The nature of investigation done reveals that the Investigating Officer is not vigilant. In this case, the scientific method of investigation has nowhere been adopted. Like school children drawing pictures, when they go for excursion, the Investigation Officer has satisfied himself by noting down the physical features of the place of occurrence. The Investigating Officer did not know the difference between the term observation, cursory glance and looking at. The outlook of an Investigating Officer in the scene of occurrence should certainly be different from that of an ordinary man. The Police Officer is expected to have a critical look out of the place of occurrence, searching for clue, material, tool etc., whether in the form of a finger print or footprint or even the scrap of nails or fall of a hair or even any other miniature form of objects, which would give sufficient clue to the police officer to proceed in the right direction during investigation. Therefore, it is not open to the learned Additional public Prosecutor to contend that the Police Officers would not search for the Material Objects recovered on the day when the deadbody was recovered and only thereafter, i.e., after several days.

14. When it is stated that the accused was absconding after the missing of the girl, the police did not even take care to collect the details of phone number of the accused and the contact details for those days, during which he was absconding. The contact details would give some clue regarding the persons contacted, plans made (if any), places visited and steps taken by him to conceal himself or to erase the evidence of murder. No effort has been taken in this direction by the Police.

15. It is not known on what basis, particularly when there is an acute dearth of evidence, the trial court has gone to the extent of awarding death sentence. There is a vital difference between the death sentence and other sentences, as in case of death sentence, once it is executed, it cannot be reversed. In other words, death sentence once executed, cannot cause resurrection of the wronged life. Therefore, the trial court should have been careful while awarding capital punishment.

16. The learned Additional Public Prosecutor would point out the observation made by the trial court, while giving conviction, stating that the sexual abuses against children are increasing; that the child marriage is also on the increase; that there is no protection for the children; that the child who innocently followed the accused, while not knowing fatefully unaware of, had been done to death; that the act of the accused is beastly, the accused is liable to be punished by hanging him to death, is totally illegal, unjust and unwarranted.

16.1. Whether these observations alone, without there being basic evidence connecting the crime and the accused, are sufficient to award a capital punishment?. Only if the evidence establishes the crime as against the accused, while considering the quantum of punishment, they may be relevant considerations. In any event, these factors cannot be consideration to record a finding of guilt as against the accused.

17. Judiciary has more accountability than the other two branches, i.e., legislature and executive, because judiciary alone has the power of judicial review over the action of other two. When more power is exercised, more caution is essential. Judging can be done only on the basis of legal evidence. If at all the trial court has felt the agony of a four year old child having been done to death, when it finds that there is no evidence, either a re-trial or de-novo trial or further investigation ought to have been ordered. Leaving those options, it is not fair and proper for the trial court to have awarded a death sentence in respect of an offence for which there is no evidence.

18. Only in rarest of rare cases, even after establishment of case by the legal evidence, awarding of death penalty is permissible. This is a case where there is no evidence at all. Still, death penalty handed down in a very casual manner, probably out of an over enthusiasm and zeal to stray into the irrelevant considerations other than those sanctioned by the highest court of the land. The Capital punishment would evoke an awe and send shock waves only when it is based on truth and evidence and would lose its sanctity and severity when it is perverse and peddled frequently by every trial court for fear of indictment from outside sources. Therefore, the learned trial Judge is called upon to explain as to why adverse remarks shall not be ordered to be entered into the service records, recording that the quality of judgment is poor.

19. For the aforesaid reasons, we hold that the accused is entitled for acquittal, as the prosecution has failed to prove the guilt of the accused beyond all reasonable doubts.

20. In the result, the reference of the learned Fast Track Mahila Court Judge, Thiruvannamalai, is answered in the negative disapproving and rejecting the award of death sentence.

20.1. The Criminal Appeal is allowed, setting aside the conviction and sentence imposed on the appellant / accused by the learned Fast Track Mahila Court Judge, Thiruvannamalai, in S.C.No.102 of 2015, by the judgment, dated 31.01.2018. The appellant / accused is acquitted of all the charges levelled against him and he is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case. Fine amounts, if any, paid by the appellant, shall be refunded to him. Bail bonds, if any, shall stand discharged.

20.2. The Case Diary and other relevant documents shall be transferred to the Central Bureau of Investigation, Chennai, who is directed to conduct de-novo investigation and file necessary final report before the committal court, within a period of three months from the date of receipt of a copy of this judgment.

20.3. We make it clear that if the investigation reveals or confirms the involvement of the accused in the second innings also, it is open to the prosecution to proceed against him, in accordance with law.

Srk

24/07/2018

S.RAMATHILAGAM, J.

While concurring with the Judgment of My Sister Justice, I would like to express my view with regard to the adverse remarks against the learned Sessions Judge's Judgment as "Poor" and the proposed disciplinary action to be taken against the said Judge, as part of our Judgment.

2) In the absence of eyewitness, we rely on the evidences and other witnesses. Some evidences are direct and some or indirect. We know the difficulty in arriving at a conclusion, which is based on evidences and witnesses only. Evidence may be in the form of materials or witnesses and many times witnesses become hostile after sometime due to many reasons. So after sometime material evidences remains the same, but witnesses become unreliable when they turn hostile.

3) So finally it is not like an arithmetic calculation where fixed formulas are there and if we know the formulas there won't be dispute in arriving / accepting answers.

4) Final judgment depends on perception of the person which depends on many factors relating to the crime like motivation materials recovered, confession and evidences.

5) During trial, many things may happen which may give new clues that may alter the direction of the case.

6) No judge gives a verdict with a preformed idea and their minds are open, so that their judgment or decision will be unbiased.

7) So it is all individuals discretion in giving importance to direct evidences or circumstantial evidence especially when there is only one suspect in a case. Especially in sensitive cases, we have to be very cautious that too before giving capital punishment because when we give a judgment our aim is not only that an innocent should not be punished but also a culprit should not escape from punishment.

8) We have to apply our mind and time before arriving at a decision because everything depends on evidence and arguments based on the evidence.

9) Even when eye witnesses are challenged in the Court, we should take utmost care before arriving at a conclusion based on circumstantial, corroborative evidences and statements given by witnesses. Anything should be proved beyond doubt.

10) Circumstances make a person as a suspect and when all the other evidence or circumstances point out same person beyond doubt he becomes the culprit.

11) We always give the benefit of doubt to the accused the aim being not to punish an innocent. At the same time a real culprit should not escape.

12) In this case, we are pained to say that the trial Court should have examined and discussed the case in a more detailed manner so that the judgment is not challenged or even if challenged it makes the appellate Court to confirm the same which will save the precious time of this Court.

13) When we are convinced in getting the proof for the crime, others should be convinced about our judgment given by us.

14) When the trial Court has discussed in detail why this punishment was awarded based on the findings against the accused, it should also take the other factors with care, which create a doubt and these doubts should also be discussed well to say why these doubts or negative points are brushed away.

15) When we reason out why we consider the factors which are against the accused we have the responsibility to reason out why we discard factors favourable to the accused. Only then the judgment becomes a full-fledged unbiased absolute judgment.

16) We cannot say that there is no evidence at all to

implicate this accused. Trial Court has discussed matters pertaining to the motivation behind this crime, recovery of the ID card, recovery of the material objects of the deceased through the accused, the description of the events or sequence of events given by the accused of how he committed the crime, getting absconded since the day of recovery of the dead body for no reason.

17) All the circumstances make everyone to suspect the accused. Hence, we cannot totally deny the possibility at all. We can only say that the evidence placed have not been proved beyond doubt. So we are inclined to take this decision only on the benefit of doubt. At the same time when we give the benefit of doubt for this accused we are also concerned that we should fix the culprit beyond doubt. So we recommend further action to prove this case.

18) As an appellate Court, we have the responsibility and we feel it is our duty to point out that the trial Court should have dealt this case in a better way especially when considering this case as a rarest of rare and also when we exercise our power to award the highest punishment namely capital punishment even though the crime is heinous.

19) We do not deny that the accused would not have committed the crime we only say that it is not proved beyond doubt. That is why we have no other alternate except giving the benefit of doubt.

20) Commenting the judgment, giving warning to the learned Sessions Judge and registering adverse remarks in the service register, all this can be done separately by giving a chance to the learned Sessions Court Judge and to explain his stand regarding the judgment given by him. Mentioning all these in a judgment copy becomes a document which may give mental agony to the learned Judge which will affect his future, who is holding the highest post in his district and member of our Forum.

21) Further, we are giving a chance for the public to comment on the trial Court Judge also. So it need not be a part of the judgment copy.

22) Same time we feel it is our duty and responsibility to point out the lapses and mistakes committed by the trial Court before arriving at a conclusion only with the intention of expecting better judgment because it involves lives and not with an intention of ridiculing or criticizing which will affect the self esteem of the learned trial Judge.

23) We have even reference in which the Supreme Court has directed to expunge the personal remarks, even if a wrong order has been delivered by the trial Court. Hence, the adverse remarks made against the trial Judge in the Judgment has to be expunged.

vsi-2

24.07.2018

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

To

1. Fast Track Mahila Court,
Thiruvannamalai
2. The Principal District and Sessions Judge,
Thiruvannamalai.
3. The Judicial Magistrate No.II,
Thiruvannamalai.
4. The Chief Judicial Magistrate,
Thiruvannamalai.
5. The District Collector,
Thiruvannamalai.
6. The Director General of Police,
Chennai-4.
7. The Public Prosecutor,
High Court, Madras.
8. The Inspector of Police,
Mangalam Police Station,
Thiruvannamalai District.
9. The Superintendent,
Central Prison,
Vellore.
10. The Superintendent of Police,
Thiruvannamalai.

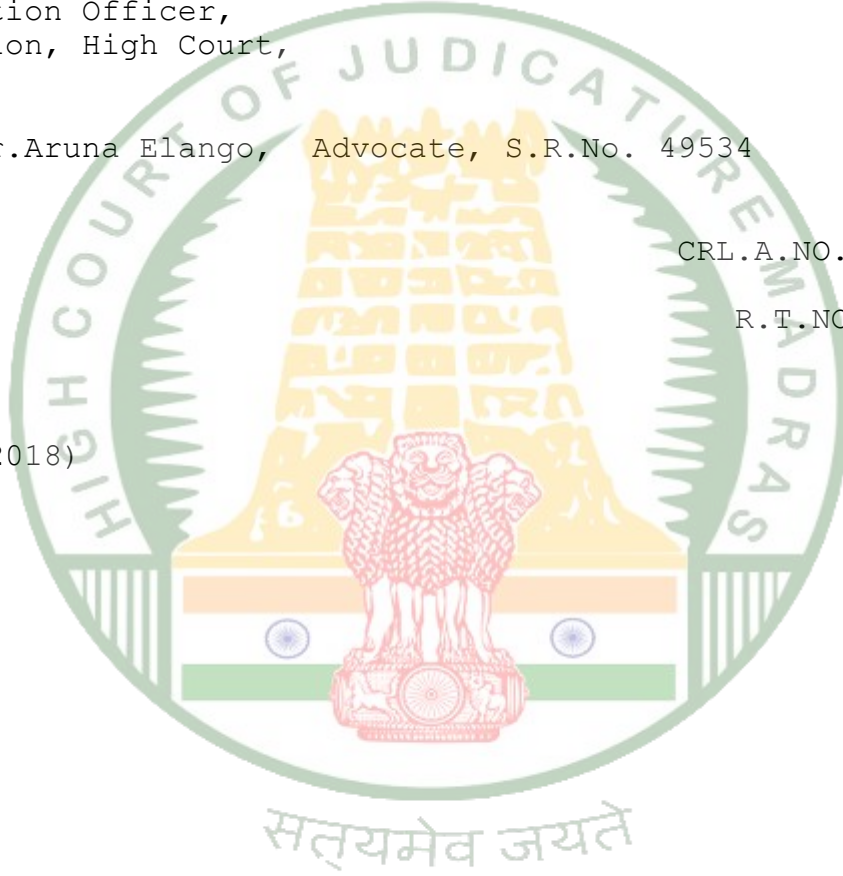
Copy TO

1. The Registrar (Judicial),
High Court, Madras -104.
2. The Section Officer,
Criminal Section,
High Court, Madras.
3. The Registrar General,
High Court, Madras.
4. The Section Officer,
'B' Section, High Court,
Madras.

+2cc to Mr.Aruna Elango, Advocate, S.R.No. 49534

CRL.A.NO.102 OF 2018
AND
R.T.NO. 2 OF 2018

KGK(CO)
GN(28/09/2018)



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