



BAIL SLIP

The Appellant/Accused viz., Senthil @ Senthilkumar was released on bail as per the order of this Court dated 08.09.16 made in CRL MP (MD)No.5803/16 in CRL A(MD)No.267/2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on	08.02.2018
Orders Pronounced on	27.03.2018

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

AND

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

Crl.A(MD) No.267 of 2016

Senthil @ Senthilkumar

... Appellant/Sole Accused

-vs-

State rep. by,
The Inspector of Police,
Thirumayam,
Namanasamudram Police Station,
Pudukkottai District.
(Crime No.84 of 2014)

... Respondent/Complainant

Prayer: Appeal filed under Section 378 of the Code of Criminal Procedure praying to allow this appeal and acquit the appellant from all the charges by setting aside the impugned judgment passed by the learned Sessions Judge, Mahila Court, Pudukkottai District in S.C.No.40 of 2015 dated 07.06.2016 and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

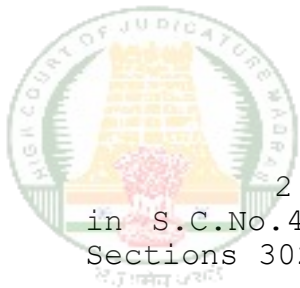
For Appellant : Mr.N.Anandha Padmanabhan

For Respondent : Mr.C.Ramesh
Addl. Public Prosecutor

J U D G M E N T

"Beware of jealousy, my lord! It's a green-eyed monster that makes fun of the victims it devours." Othello by Shakespeare.

A person with full of youth, without understanding the responsibility, but believing in his authority and possibly out of unqualified possessiveness, has destroyed not only the life of the deceased, i.e., the mother having three children, besides robbing the future of the three children at one go, but also his own life, out of jealousy. That is why, Shakespeare said "beware of jealousy".



2. The conviction and life sentence passed against the accused in S.C.No.40 of 2015 dated 07.06.2016 in respect of the charges under Sections 302 and 449 IPC reads as under:

Sl.No.	Offences	Conviction and Sentence
1.	Section 302 IPC	Life Sentence with a fine of Rs.1000/- in default of six months R.I.
2.	Section 449 IPC	Five years R.I with a fine of Rs.1000/- in default of six months R.I. (Sentences to run concurrently)

3. According to the case of the prosecution, the accused caused the following injuries to the deceased, which led to her death:

External Injuries:

- 1) 3 x 8cm cut injury over anterior aspect of neck with hyoid and larynx missing carotids cut.
- 2) 3 x 4cm CLW (L) frontal area
- 3) Frontal bone fracture
- 4) Cerebral crushed and exposed

Internal Organs:

- Stomach, Intestine intact.
- Liver, Spleen, Kidney intact.
- Hyoid and Larynx missing.
- Intestine empty

4. According to the Doctor (PW9 - Dr.Rajaraman), who conducted the post-mortem, the deceased died of injury on vital organ, brain and cut injury of Larynx and Carotid. The cause of the death is not under dispute, but the dispute is, whether it is only the accused, who was responsible for causing those injuries.

The facts leading to the death of Shanthi:

4.1. PW1 is the younger brother of the deceased. PW5 / child witness is the daughter of the deceased. The husband of the deceased (PW7 - Selvam) was employed at Maldives as a Hotel Manager. The deceased was residing along with her two daughters (PW5 - Harini and PW6 - Priyanka) at Narchandupatti Village within the jurisdiction of Namanasamuthiram Police Station. Her marriage took place about 17 years before and she was blessed with two daughters and one son;

4.2. The deceased was employed in the Old Age Home at Narchandupatti. The accused was in friendly terms with all the members of the family of PW1 and the family of Shanthi;

<https://hcservices.ecourts.gov.in/hcservices/>

4.3. The accused had borrowed money from the deceased and when it was demanded back, the accused developed animosity. The deceased was

also moving with others by using cellphone and when this was not to the liking of the accused, the enmity further became intense;

4.4 On 11.07.2014, the accused came to the house of the deceased in a Scooty and trespassed into the house of Shanthi, picked up quarrel with her and on account of altercation, the accused threw the gas cylinder against Shanthi and thereafter, caused cut injuries using two knives;

4.5. PW2 / Nagarajan, who visited the house of the deceased, on seeing the daughter of Shanthi crying and after seeing the dead body of Shanthi informed this incident to Alagusundaram / PW1 / brother of the deceased;

4.6. PW1 preferred the complaint to the Sub-Inspector of Police (PW-13-Marimuthu) on 11.07.2014 at about 5:00pm and a case was registered in Namagamudam Crime No. 84 of 2014 under Section 302 IPC, which was registered as First Information Report under Ex.P11;

4.7. PW14 / the erstwhile Inspector of Police visited the place of occurrence and he prepared the Observation Mahazar and a sketch (PW12) and from the place of occurrence, he recovered Material Objects. The inquest was conducted and the inquest report is Ex.P14. The body was sent for post-mortem and from the body of the deceased, Saree, blouse and inskirt were recovered in Form-95;

4.8. He arrested the accused on 13.07.2014 and he recorded the confession statement given by the accused and recovered cellphone, knife and Scooty Pep in front of witnesses. Thereafter, he filed the final report against the accused.

5. The Trial Court, after consideration of oral and documentary evidence found the accused guilty under Section 302 IPC and imposed the sentence as stated supra.

6. The judgment of conviction and sentence passed by the Trial Court are assailed by the learned counsel for the appellant on the following grounds:

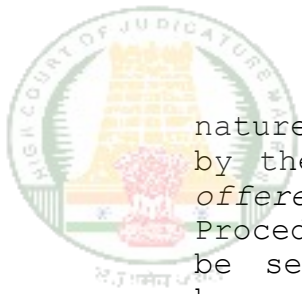
6.1. The main contention raised by the learned counsel for the appellant is that there is an inordinate delay in sending the FIR to the Magistrate and in the absence of any explanation for the delay, the delay is fatal and necessarily, the accused has to be acquitted giving benefit of doubt. In support of the submission, the following two decisions are relied upon:

i) *Jang Singh and others*, reported in (2001) 9 SCC 704:

"Delay in forwarding FIR to Magistrate - Delay of 3 days in sending FIR to Magistrate - No explanation given in respect of - said delay, held, was fatal."

ii) *Ramesh Baburao Devaskar and others*, reported in (2007) 13 SCC 501:

"20. The Code of Criminal procedure provides for certain internal and external checks; one of them being the receipt of a copy of the First Information Report by the Magistrate concerned. It is not in dispute that in a grave case of this



nature, the copy of the First Information Report was received by the Magistrate *four days later*. *No explanation has been offered therefor*. Section 157 of the Code of Criminal Procedure mandates that the First Information Report should be sent to the nearest Magistrate within a period of 24 hours. It has not been disputed that the occurrence took place near the District Headquarters. There cannot be any reason whatsoever as to why the First Information Report was sent after four days."

6.2. The occurrence is stated to have taken place on 11.07.2014. According to the learned counsel for the appellant, the FIR has reached the Court only on 14.07.2014 as per the date seal of the Court.

6.3. The learned counsel representing the respondent would point out that the initial of the Magistrate on the FIR is dated 12.07.2014 and as 12.07.2014 and 13.07.2014 were holidays, the date seal is on 14.07.2014 and therefore, there is no delay in sending the FIR to the Court.

6.4. The learned counsel for the appellant would contend that still there is delay in sending the FIR to Court, considering the distance between the Court and the Police Station.

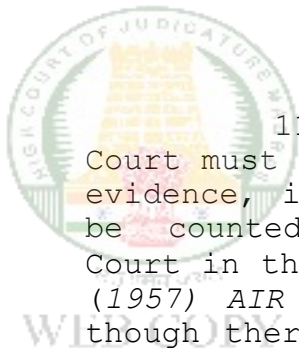
6.5. Preparation of the FIR and sending it to the Court are not the only duties upon the Police Officer, who registered the case and from the evidence, it is shown that immediately after the occurrence, inquest has been conducted. Therefore, the FIR, which was sent to the Court on the very next day cannot be said to be sent with inordinate delay and therefore, the contention that the delay in sending the FIR to Court affects the case of the prosecution cannot be accepted.

7. In the First Information Report, it is stated that the accused was without any job, though he had completed his Diploma course and therefore, under the guise of starting a business, he was obtaining money from the deceased. As the deceased wanted return of money, the accused took quarrel with the deceased and this was informed by the deceased to PW1.

8. It is relevant to point out that the FIR speaks about Harini and her earliest statement before Alagusundaram is that, it is the accused, who caused the death of her mother.

9. In the evidence of PW7/Selvam, it is stated that he had been working at Maldives and on 11.07.2014 at about 5:00pm (indian time), his brother-in-law Alagusundaram informed him that his wife had been killed by one Senthil. This statement corroborates the evidence of the eyewitness Harini and the evidence of Alagusundaram, when he states that when he saw the dead body, he was informed by Harini that her mother was killed by the accused and perhaps, this information might have been passed on to the father.

10. The next contention is that the only eyewitness to the occurrence is PW5 / Harini / the daughter of the deceased, whose evidence is a tutored one and it is also abundant with contradictions, embezzlement and improbabilities and hence, the Trial Court ought not to have relied upon the evidence of the child witness.



11. The learned counsel for the appellant contended that the Court must be concerned with the quality and not with the quantity of the evidence, in the sense that the evidence ought to be weighed and not to be counted. In support of the same, the judgment of the Hon'ble Supreme Court in the case of *Vadivelu Thevar vs. The State of Madras*, reported in (1957) AIR (SC) 614 is relied upon, where-under, it has been held that though there is no legal impediment to convict the accused based on the testimony of the single witness, the innocence of a single person is also established based on the testimony of a single witness.

11.1. There is no quarrel over the proposition, but the question is whether the evidence of the eyewitness Harini is supported by the surrounding circumstances or it has been destroyed by the surrounding circumstances.

12. The learned counsel for the appellant further relied upon a decision of the Hon'ble Supreme Court in the case of *State of Rajasthan vs. Babu Meena*, reported in (2013) AIR (SC) 2207, where-under it has been held that conviction can be given based on sole testimony of prosecutrix, if found to be worthy of credence and reliable and when it is found to be wholly unreliable, the Court has no option than to acquit the accused.

13. Here the question is, whether the evidence of Harini is credible or untrustworthy.

14. With regard to the judicial assessment of credibility of child witnesses, the scholars have pointed out as follows:

"There is generally no way to be absolutely certain whether any witness is telling the "truth" – that is, giving an accurate description of what the witness saw or heard. Indeed, few witnesses are completely inaccurate or wholly dishonest in every aspect of their testimony, and no witness can be totally accurate and complete in every statement made about a past event.

Assessments of credibility are carried out by a number of different actors in the criminal justice system. An initial assessment of credibility is made during the investigation stage of a criminal case by the police, who in Canada typically have the responsibility for whether to lay a charge and commence a prosecution. In cases involving child abuse victims, a social worker employed by a child welfare agency often also will have a role in this initial investigative interview, deciding whether a child protection proceeding will be commenced and perhaps providing advise to the police about the commencing of a criminal prosecution. Crown prosecutors are expected to interview child witnesses before they testify (though this does not always happen in practice). Even if the prosecutor believes that the child is telling the truth, the prosecutor may decide that a case should not proceed to trial because the child is not likely to be perceived as "credible" by a trier of fact, who may not fully appreciate issues around children's testimony or because some supportive evidence, such testimony from other child witnesses, may not be admissible in court.⁴ If a case proceeds to trial, the trier of fact must decide which elements of the testimony of each witness about the central matters at issue



are to be regarded as "credible"; that is, to what extent the testimony can be relied upon in making a decision.

While the different aspects of credibility assessment are rarely explicitly analyzed in reported judgments, we posit that credibility assessment involves the consideration of several different aspects of the testimony of a witness:

Honesty: Is the witness making a good faith effort to fully and accurately give evidence, or conversely, is the witness deliberately lying or at least not disclosing certain information?

Memory: How accurate and complete is the memory of the witness?

Suggestibility: Has the memory of the witness been distorted as a result of conversations or questions with others?

Communication Ability: How well does the witness understand the questions and how well is the witness able to communicate about the matters at issue?

A trier of fact may rely on a number of factors when assessing the credibility of a witness, including:

The (in)compatibility of the witness's testimony with other evidence in the case;

The demeanour of the witness while giving testimony, including such matters as the manner of speech, pauses, physical demeanour and apparent confidence of the witness;

Whether the witness tells a consistent story, or conversely, becomes self-contradictory;

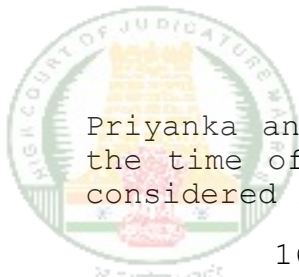
Whether the testimony "makes sense" – that is, how consistent is the testimony with the understandings of the trier of fact about what happens in the world and how people act in different situations;

Whether or not the witness has a general reputation for honesty or dishonesty.

The consideration of these factors by a trier of fact will inevitably be influenced by the personality, education, intelligence, personal experiences and values of the trier of fact."

14.1. The evidence of the child witness has to be scanned in the light of those parametres pointed out.

15. So far as Harini is concerned, she is a school going student. According to her, she was suffering from fever, she did not go to school on that day; according to her sister Priyanka, after returning from school, she was informed by Harini that it was the accused, who of their mother. Priyanka was aged 14 at the time of occurrence. If at all, the prosecution was interested in getting a witness from the family of the deceased, they could have preferred only



Priyanka and not Harini, who is younger to her, who was aged about 7 at the time of incident, that has not been done. Therefore, the issue to be considered is, whether the evidence of Harini inspires the confidence.

16. The contention of the learned counsel for the appellant is that the evidence of Harini cannot inspire confidence, as there is difference, which is substantial and critical with reference to the time of occurrence and the place of occurrence and therefore, Harini could not have been an eyewitness. The evidence of PW1 / Alagusundaram is relied upon by the defence, where he would state that on 11.07.2014 at about 4.00pm, he was informed by one Nagarajan that his sister (deceased) is dead at her home and on hearing this, he went to the house of the deceased and at his request, Harini unlocked the door of the house.

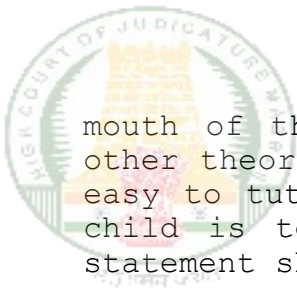
17. PW2 / Nagarajan would state that when he went to the house of the deceased and pressed the calling bell, Harini came crying and when he climbed upstairs, he saw Santhi in a bloodpool (he had been treated as a hostile witness). PW5 / Harini would state that the deceased came to her house in the morning itself and when the deceased demanded that her mother should not speak over the phone, there was a quarrel during which the deceased ran down in the steps and at that point of time, she was asked to go upstairs and the accused stabbed the deceased with the use of two knives. According to the evidence of Harini, the dead body was in the downstairs. She has stated during cross examination that at about 12:00 in the afternoon, they had been in the house of Alagusundaram. From the evidence of this witness, one is put under confusion as to whether the occurrence took place in the morning or in the evening, as she has stated that she is not sure as to whether they went to Pudukottai Police Station in the morning or in the afternoon. The cumulative effect of chief and cross examinations would go to show that they might have gone to the Police Station only in the evening.

18. Selvi Priyanka / PW6 would state that when she came to her house, the body of the mother was found under the staircase and when she enquired her sister, she told her that the mother was attacked by Senthil using the cylinder and knife. From the evidence of this witness, the confusion created in the evidence of Harini gets clarified, when she states that uncle Alagusundaram took her to Kannanur along with her sister Harini.

19. The Scientific Officer would state that the material objects 1 and 3 to 9 contained human blood and Item No.2 did not contain any bloodstain. She would further state that bloodgrouping could not be done, as the blood drops were found strained.

20. It is not as if that this Court is left to no option to assess the evidence of the Child witness. The evidence of child witness finds corroboration from the evidence of her father, who was at Maldives at the date of occurrence and also by the evidence of her maternal uncle Alagusundaram. Therefore, even though there is contradiction in the evidence of the child witness, these contradictions do not create doubts, but those contradictions travel along with the innocence of the childhood.

21. How to appreciate the evidence of the child witness had been discussed by the court for centuries together. There are two competing theories with reference to appreciation of child evidence. One theory postulates that the child is innocent and whatever comes from the



mouth of the child must be true and therefore, it is truth alone. The other theory postulates that because of the innocence of the child, it is easy to tute her and even though there may not be wilful falsehood, the child is tempted to speak what is tuitored to her and therefore, her statement should not be believed.

WEB COPY 22. The basic problem in believing the statement of the child witness was explained by the Supreme Court of Canada in 1962 SCR 469 at 473 [R. Vs. Kendall]:

"The basis for the rule of practice which requires the judge to warn the jury of the danger of convicting on the evidence of a child, even when sworn as a witness, is the mental immaturity of the child. The difficulty is fourfold: 1. His capacity of observation. 2. His capacity of recollection. 3. His capacity to understand questions put and frame intelligent answers. 4. His moral responsibility."

23. After 1990, there was a recognition that the testimony of children should not be assessed in the same way as the testomony of adults. The Court placed appreciation for the true nature of child testimony 1990 2 SCR 30 [R. vs B(G)]:

A flaw, such as a contradiction, in a child's testimony should not be given the same effect as a similar flaw in the testimony of an adult.... While children may not be able to recount precise details and communicate the when and where of an event with exactitude, this does not mean that they have misconceived what happened to them and who did it.

24. Explaining the circumstances under which a contradiction is bound to occur in a statement of a child witness, the Supreme Court of Canada in the case of R.vs F(C) (1997) 3 SCR 1183 Pg.48 has pointed out that the peculiar perspectives of the children can affect their recollection of events and the relevant observation reads as under:

That the peculiar perspectives of children can affect their recollection of events and that the presence of inconsistencies, especially those related to peripheral matters, should be assessed in context. A skilful cross-examination is almost certain to confuse a child, even if she is telling the truth. That confusion can lead to inconsistencies in her testimony. Although the trier of fact must be wary of any evidence which has been contradicted, this is a matter which goes to the weight ... and not to its admissibility.

25. It is the Trial Court judge, who has the opportunity of observing the demeanour of the witness, especially the nature and the circumstances in which the child deposes. The Trial Court Judge has the responsibility that the questions put to the children are very clear and to ensure that the answer is given after understanding the question. Therefore, when the Trial Court Judge https://hcservices.courts.gov.in/hcservices/ has an opinion that evidence of child witness is worthy of acceptance and it is found to be sustainable, we have no reason to defer with the opinion of the Trial Court Judge.



26. The oral evidence of Harini is substantiated / strengthened / corroborated by the evidence of other witnesses and other circumstances. Therefore, even though there is discrepancy with regard to the place of occurrence, which might have taken place both in the upstairs as well as in the downstairs and ultimately, the body would have been found in the downstairs. When the identity of the deceased is not under dispute and the mode of death is also not under dispute, the discrepancy with regard to the place of occurrence does not go to the root of the matter and therefore, this Court is of the view that the evidence of Harini can be safely accepted.

27. In the result, this Criminal Appeal is dismissed. The conviction and sentence passed on the accused by the learned Sessions Judge, Mahila Court, Pudukkottai District in S.C.No.40 of 2015 dated 07.06.2016 is hereby confirmed.

28. In view of dismissal of the present appeal, the Trial Court is directed to secure the custody of the accused and send him to prison so as to undergo the remaining period of imprisonment as ordered by the Trial Court. The bail bond, if any executed by the accused is hereby cancelled.

Sd/
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To:

- 1.The Sessions Judge, Mahila Court,
Pudukkottai District.
2. The District Munsif-cum-Judicial Magistrate,Thirumayam,
(with a request to serve a copy of the Judgment on the accused)
3. The Inspector of Police,
Thirumayam,
Namanasamudram Police Station,Pudukkottai District.
4. The Director General of Police, Mylapore,Chennai.
5. The District Collector, Pudukkottai District.
6. The Superintendent,Central Prison, Trichy.
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,Madurai.

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