



Bail Slip

The Appellant/Accused was directed to be released on bail vide order dated 24.10.2017 in Crl MP(MD)No.9275/2017 in CRL A(MD) No.406/2017 on the file of the Madurai bench of Madras High Court, Madurai.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **05.07.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **M.SATHYANARAYANAN**

and

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN****Crl.A(MD)Nos. 289 and 406 of 2017**

Manickaraj .. Appellant /Accused No.1
in Crl.A. (MD).No.289 of 2017

Malkia .. Appellant /Accused No.2
in Crl.A. (MD).No.406 of 2017

Vs.

State represented by
The Inspector of Police,
Alwarthirunagari Police Station,
Thoothukudi District.
(Crime No.168/2014)

.. Respondent/Complainant
in both appeals

COMMON PRAYER: Appeals are filed under Section 374(2) of the Code of Criminal Procedure against the Judgment and conviction passed by the learned II-Additional District and Sessions Judge, Thoothukudi, in S.C.No.183 of 2015 dated 15.04.2016 and acquit the appellants herein.

For Appellants : Mr.G.Karuppasamy Pandian
for M/s.F.Deepak
for Appellant/A2
in Crl.A. (MD).No.406 of 2017
Mr.N.Anandakumar
for Appellant/A1
in Crl.A. (MD).No.289 of 2017

For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor
in both appeals

**COMMON JUDGMENT**

(Judgment of the Court was made by **M. SATHYANARAYANAN, J**)

The appellant in CrI.A.(MD).No.281 of 2017 is A1. The appellant in CrI.A.(MD).No.406 of 2017 is A2. Both the accused were charged, tried and convicted by the Court of II-Additional District and Sessions Judge, Thoothukudi in S.C.No.183 of 2015 vide the impugned judgment, dated 15.04.2016 and the details are as follows:

A1 and A2 were convicted for the commission of offence under Section 302 r/w 34 IPC and sentenced to imprisonment for life together with a fine of Rs.1000/- each, in default, to undergo simple imprisonment for a period of one year. A1 was acquitted for the commission of offence under Section 506(ii) IPC. As against the said acquittal, the State did not prefer any appeal. The trial Court has also granted set off in terms of Section 428 Cr.P.C. The appellants/A1 & A2 in the said Sessions case, challenging the legality of the conviction and sentence awarded by the trial Court have filed the respective appeals. Since the appeals arise out of the common judgment, both the appeals are disposed of by this common judgment.

2. The facts leading to the filing of these appeals, relevant for the disposal of these cases, are briefly narrated as follows:

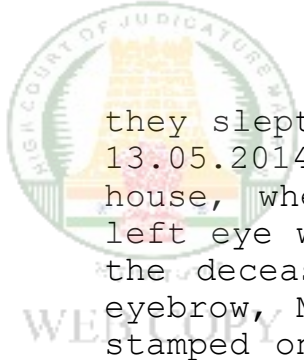
2.1) The deceased Muthukumar is the husband of A2 and the son of P.Ws.1 and 2 and brother of P.W.8. The marriage between the deceased and A2 was a love marriage and out of wedlock, two children were born. A2 used to go for a menial job at Chempur.

2.2) A2 had developed acquaintance with A1 and her husband, namely, deceased, Muthusamy had also castigated her and despite that, she continued that relationship.

2.3) The parents of the deceased were also informed about the said relationship and they also advised A2 not to do so. The deceased informed P.W.1 through phone on 11.05.2014, that A1 had threatened that, if he disclosed the said fact to others, he will be finished off and accordingly, on receiving the information P.Ws.1 and 2 proceeded to the place, where their son Muthusamy was residing, and, accordingly, reached the place during the evening hours of 12.05.2014, where they found A2 and they also scolded A2.

2.4) A2 felt that the presence of her husband is creating hindrance to her relationship with A1, therefore, advised A1 to come during the night hours on 12.05.2014 for doing away with the life of her husband and also informed A1 that she had already sent her children to her parents' home.

2.5) P.Ws.1 and 2, along with the deceased, took dinner and



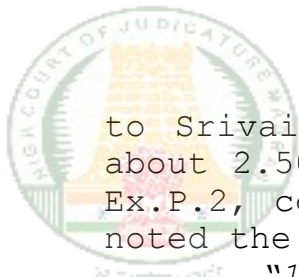
they slept outside the house and during the early morning hours on 13.05.2014, they heard an alarm, and both of them rushed inside the house, where they found A1 and A2 beating the deceased near the left eye with iron rods. A1 with M.O.2-iron rod hit on the head of the deceased and when he tried to stab the deceased above right eyebrow, Muthusamy tried to prevent it and A1 using his right leg stamped on him and attacked him on the right hand above the right wrist and caused fracture. A2 uttered that if Muthusamy is alive, they cannot live peacefully and accordingly, took the iron pipe, which was lying nearby and attacked him on his right eye, left forearm and left shoulder, right side of the back and caused injuries. Thereafter, A1 strangled Muthusamy by using both his hands. The said occurrence was witnessed by P.Ws.1, 2 and 3 and A1 & A2 dragged the deceased to the backside of the house and when P.Ws.1 and 2 tried to raise alarm, both the accused threatened them that if they come near, they will also face dire consequences and thereafter, they fled away from the scene of crime with the weapons.

2.6) P.W.1 contacted his son PW.8 and on his arrival and after the arrival of his relatives, he went along with his son, Abraham Lincon and PW.2 to Alwarthirunagari Police Station and lodged a complaint to the PW14- Sub Inspector of Police, on 13.05.2014. The Sub Inspector of Police, upon receipt of the complaint, marked as Ex.P.1, registered a case in Crime No.168 of 2014, for the commission of offence under Sections 302, 294(b) and 506(ii) IPC., at about 10.00 hours on the same day. The printed FIR was marked as Ex.P.14.

2.7) P.W.14 despatched the original of Ex.P.1 and FIR (Ex.P.14) to the jurisdictional Magistrate, Srivaikundam through PW.12-the Head Constable attached to the Alwarthirunagari Police station and forwarded the copies to his official superiors.

2.8) P.W.16 was the Station House Officer of Alwarthirunagari Police station and on receiving the FIR from P.W.14 at about 11 hours on 13.05.2014 commenced investigation and proceeded to the scene of crime at about 11.15 a.m., on that day and in the presence of P.Ws.5 and 6, prepared observation mahazar, marked as Ex.P.15 and drew rough sketch, marked as Ex.P.16. On 13.05.2014, at about 12.15 p.m., P.W.16 conducted inquest in the presence of panchayatars and prepared inquest report, marked as Ex.P.17 and he completed the inquest at about 14.15 hours on that day. In the presence of the very same witnesses, at about 14.15 hours, P.W.16 seized M.Os.5 and 6 under the recovery mahazar-Ex.P.18 and the said Mahazar was attested by the very same witnesses.

2.9) P.W.16 sent a requisition through P.W.13 for conducting the postmortem on the body of the deceased and sent the requisition as well as the body to the Government Hospital, Srivaikundam for conducting the postmortem. PW.9 was the Assistant Surgeon attached



to Srivaikundam Government Hospital and on receiving the body at about 2.50 p.m. on 13.05.2014 along with the requisition marked as Ex.P.2, commenced postmortem at about 3.30 p.m., on 13.04.2015 and noted the following features.

"1. A black mole over the lateral end of the clavical (Left)

2. A black mole over the left Index Finger

3. A scar over the right knee.

The body was first seen by the PW.9 at 3.30 p.m. on 13.05.2014. Its condition then was rigor mortis present in all the 4 limbs. Post-mortem commenced at 3.30 p.m on 13.05.2014. Appearances found at the Post-mortem Moderately built male body lying on its back with Rigor mortis present in the all 4 limbs. Both eyes closed. Mouth partially opened. Tongue kept inside the mouth. Blood stained discharge from the left nostrils."

2.10) P.W.9 also noted the following external injuries by way of inner examination:

"(i) Lacerated Wound left supra orbital region 2x2x1 cm in size.

(ii) Contusion over the right supra orbital region. 3x3 cm in size.

(iii) Multiple abrasions over the right index finger, IA-inter digital space left scapular regions left inter scapular region right right scrotal region

(iv) Deformity and both bone fracture over the 1/3rd of the right forearm.

(v) Contusion over the left upper eyelid and sub conjunctival present on both eyes.

(vi) Multiple pressure abrasions over the right side of the neck and middle of hte neck below the thyroid cartilage size a bout 1/4 to 1/2 cm (Probably finger and nail marks).

Skin: Black coloured (NC) collections of the blood present in the Muscles.

Internal Examination: Thorax: Ribs Cartilage Normal. Heart Normal. Oesophagus normal. Larynx and Trachea: contused. Hyoid bone fractured on right side with surrounding muscles contused. Both lungs congested.

Abdomen: Liver, spleen, kidney's congested. Intestine blooded with gas. **Stomach:** (torn) 200ml of undigested food materials. (torn) (nc) smell detected. **Skull and**

Brain: No external injuries noted. Brain Normal in consistence. Membrane Intact. Base of Skull- Intact- Genitalia- Normal. Spinal Column- Normal."

2.11) P.W.9 after concluding the postmortem opined that "the deceased would appear to have died of Asphyxia due to violent compression over the neck (Throttling) about 12-18 hours prior to



Post-mortem". The postmortem report prepared by PW.9 was marked as Ex.P.3.

2.12) P.W.16 continued his investigation and examined PW.1 to 4, 6, 8, 12 and 14 and recorded their statements under Section 161(3) of Cr.P.C. P.W.16 effected the arrest of A2 in the presence of PW.10 and his menial, at about 16.15 hours, on 13.05.2014 and he voluntarily came forward to give a confession statement, and the admissible portion of that confession statement was marked as Ex.P4. M.O.1 was recovered from the haystack near the house of the deceased.

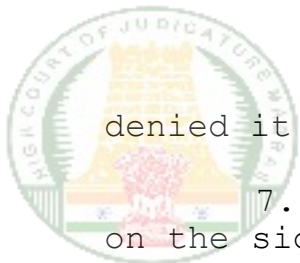
2.13) The arrested accused and the material objects were also forwarded to the jurisdictional Magistrate Court. A2 was remanded to judicial custody and on the same day, P.W.16 recorded the statement of PW.10, the village menial and also further examined PW.1. PW.16 on coming to know that A1 had surrendered before the Court of Judicial Magistrate No.V, Tirunelveli, took necessary steps to obtain police custody on 20.05.2014. In the police station on 20.05.2014, in the presence of PW.10 and his menial, A1 voluntarily came forward to give a confession statement and as per the admissible portion of the confession statement, marked as Ex.P6, P.W.16 recovered M.O.2 under the recovery of Mahazar and thereafter sent M.O.2 to the Court and the accused for judicial custody. PW.16 once again examined P.Ws.7, 4, 10 and 15. On 03.06.2014, P.W.16 recorded the statement of P.W.11 as well as the doctor, namely, P.W.9, who conducted autopsy on the body of the deceased. PW.16 on completion of the investigation on 03.06.2014, filed final report before the court of Judicial Magistrate, Srivaikundam, charging the accused for the commission of offence under Sections 302, 294(b) and 506(ii) IPC.

3. Upon receipt of the charge sheet in PRC.No.61/2014, the committal court summoned both the accused and furnished them with a copy of the document under Section 207 Cr.P.C. and having found the case is triable by the Sessions Court, committed the same to the Principal Sessions Court, Thoothukudi and the said Court, in turn, made over the case to the Court of II-Additional District and Sessions Judge, Thoothukudi.

4. The trial Court issued summons to the accused and on their appearance, framed charge under Section 302 r/w 34 against both the accused and also charged A1 under Section 506(ii) IPC and questioned them. Both the accused pleaded not guilty to the charge framed against them.

5. The prosecution, in order to sustain their case, had examined P.W.1 to P.W.16 and marked Ex.P.1 to Ex.P.18 and also marked M.O.1 to M.O.6.

6. Both the accused were questioned under Section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances made out against them in the evidence tendered by the prosecution and they



denied it as false.

7. Neither oral evidence nor documentary evidence was let in on the side of the accused. The trial Court on consideration of the oral and documentary evidence, found the accused guilty under Section 302 r/w 34 IPC and convicted them as stated above and acquitted A1 for the commission of offence under Section 506(ii) IPC and against the said acquittal, the State has not preferred any appeal. The accused challenging the legality of the said conviction and sentence have filed the respective appeals.

8. Mr.N.Anathakumar, learned counsel appearing for the appellant/A1 in CrI.A.(MD).No.289 of 2017 and Mr.G.Karuppasamy Pandian, learned counsel assisted by Mr.F.Deepak, learned counsel appearing for the appellant/A2 in CrI.A.(MD).No.406 of 2017 made the following submissions.

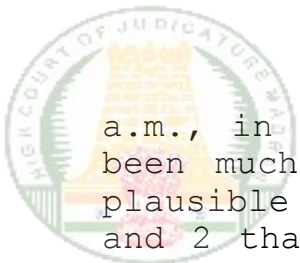
1. The origin and genesis of the occurrence is highly doubtful for the reason that the evidence as to the arrival of P.Ws.1 and 2 to the house of the deceased, cannot be believed and their presence at the time of the alleged occurrence is also doubtful.

2. According to PW.1 at about 8.00 a.m., on 13.05.2014, police came to the spot along with sniffer dog and also utilised the services of the sniffer dog and the statement of other witnesses were also recorded. But the prosecution has projected the case as if PW.1, accompanied by his son P.W.8 went to the police station and lodged a complaint at about 10.00 a.m. on 13.05.2014, which resulted in the registration of the FIR and commencement of the investigation.

9. The primordial submission made by the learned counsel for the appellants is that the statement, said to have been recorded from P.W.1 on 13.05.2014 could not have been the first information as even according to P.W.1, the police party had arrived at the scene of occurrence even at 8.00 a.m., though it is the evidence of P.W.1 that he went to the police station at about 10.00 a.m., and gave the complaint. It is submitted that the testimony reveals the presence of the police at the scene of occurrence even before the lodging of the complaint by P.W.1, which clearly shows that the earliest complaint has been suppressed to suit the case of the prosecution. It is therefore submitted that the origin and genesis of the complaint casts a serious doubt on the veracity of the prosecution version.

10. It is further submitted that there are very many material contradictions in the testimony of PWs.1 and 2 from that of their statement recorded under Section 161(3) Cr.P.C. and therefore, it would wholly unsafe to place reliance upon their testimony to record the conviction of the appellants/A1 & A2.

11. PW.9-the doctor, who conducted autopsy, had spoken about the undigested food and if the said time is taken into consideration, the occurrence could not happened at about 2.00



a.m., in the early morning hours of 13.05.2014, but it would have been much earlier, for which, the prosecution did not offer any plausible or tenable explanation. It is the testimonies of P.Ws.1 and 2 that their cloth were also stained with blood and the said clothes have not been seized and sent for forensic analysis.

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12. The arrest of A2 as well as the recovery of M.O.1 is also highly doubtful for the reason that even according to PW.1, when he, along with his wife PW.2 were waiting in the police station for the arrival of their elder son-PW.8, A2 was sitting in the police station and, therefore, the subsequent arrest of A2 and recovery pursuant to the said arrest is also highly suspicious and doubtful.

13. Admittedly, P.W.1 was present even at the time of inquest and PW.16-Investigating Officer did not examine P.W.1 during inquest and at a later point of time, on 13.05.2014, only he had examined P.W.1, for which also no explanation has been offered.

14. The FIR was registered at about 10.00 a.m. on 13.05.2014 and it was despatched through P.W.12 and according to the said witness, he received the original of FIR(Ex.P.14) and Ex.P1 at 10.30 a.m. on 13.05.2014 and handed over the same to the jurisdictional court at 15.15 hours and inspite of the specific questions put to the said witness in cross-examination as to the belated despatch of Ex.P.1 and Ex.P.14-FIR, he has failed to offer any plausible explanation for the delay. The delay in despatching the FIR-Ex.P.14 and Ex.P1 is only on account of the fact that the prosecution wanted to rope in both A1 and A2 with the commission of the offence and, therefore, the delay in the said documents reaching the Court is detrimental to the case of the prosecution.

15. There is also material contradiction between the testimonies of P.Ws.1 and 2, as to the place, in which the alleged occurrence took place. According to PW.1, the initial occurrence took place inside the house and later on as his son was dragged, whereas, according to PW.2, the occurrence took place outside the house, in front of the bathroom.

16. As regards overt act attributed against A1, Ex.P.1, does not contain any statement, as to A1 putting his foot on the neck of the deceased whereas, PW.1 during the course of his testimony made the material improvement, may be on account of the fact that the cause of death, according to the PW.9, was due to asphyxia, but not on account of the injuries inflicted by use of M.Os.1 and 2 and that apart, even as per Ex.P1, A1 strangled the deceased by use of his hands and whereas, the deposition of P.W.1 is otherwise.

17. In sum and substance, it is the submission of the respective learned counsel appearing for the appellants that the above said infirmities, which are material in nature had shaken the



very foundation laid by the prosecution, and in any event, the trial Court ought to have given the benefit of doubt to the both accused and acquitted them and hence pray for allowing these appeals and acquit the accused.

18. Per contra, the learned Additional Public Prosecutor appearing for the State contended that admittedly, the witnesses are hailing from rural areas and they are rustic witnesses and they can not be expected to verbatim reproduce the events that took place to which they were the eye witnesses. Even if they gave parrot like version also, it would be disbelieved considering the nature and background and further, they have no axe to grind against A1 and A2 and whatever they have spoken as eyewitnesses are in tune with what they saw and their testimonies are also in tune with Ex.P1-compliant given by PW.1.

19. Insofar as the submission as to the undigested food is concerned, it is the submission of the learned Additional Public Prosecutor that the digestion of the food normally takes between 4 to 6 hours from the consumption and the digestion process depends upon person to person and hence, one cannot come to the conclusion that the occurrence did not take place at about 2.00 a.m., on 13.05.2014 and further pointed out, it is only the opinion of the expert and it should be appreciated like any other evidence though the opinion of the expert stands on a higher perspective.

20. Insofar as the material contradictions pointed out by the respective learned counsel appearing for the appellants are concerned, it is the submission of the learned Additional Public Prosecutor that the trial of the case commenced 1½ years from the date of occurrence and there is bound to be some embellishment and variations and it is also proof of fact that the witnesses had spoken the truth and the contradictions pointed out by the learned counsel for the appellants are trivial and minor in nature and it does not affect the core of the prosecution case.

21. Insofar as the non-examination of P.W.1 during inquest is concerned, it is the submission of the learned Additional Public Prosecutor that the fact remains PW.1 was examined on the same day at a later point of time, and therefore, it is not prejudicial to the case of the prosecution in any manner. He further submitted that with regard to the belated despatch of the Ex.P.1 and FIR, proper explanation has also been offered by the concerned witness. In sum and substance, it is the submission of the learned Additional Public Prosecutor that it is the case of eyewitness account, and therefore, motive assumes insignificance and the prosecution through oral and documentary evidence and material objects had conclusively proved the guilt on the part of the appellants/A1 and A2 beyond all reasonable doubt and the trial Court, on proper appreciation of oral and documentary evidence and other materials has rightly reached the conclusion to convict and sentence both the accused and accordingly, prays for dismissal of



these appeals.

22. This Court paid its anxious consideration to the rival submissions and also perused the oral and documentary evidence and other materials as also the original records.

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23. The following questions arise for consideration in these appeals.

1. Whether the finding of guilt arrived at by the trial Court is based upon proper appreciation of oral and documentary evidence and other materials ?

2. Whether the impugned judgment of the trial Court in awarding conviction and sentence for both the accused, are sustainable?

24. As pointed out by the learned Additional Public Prosecutor, the prosecution has projected its case on eyewitness account, and therefore motive fades into insignificance and insofar as the motive is concerned, P.Ws.1 and 2 have been examined and they have spoken about the disharmony between the deceased and his wife-A2 on account of her infertility and on account of her proximity/relationship with A1.

25. As already pointed out, the case of the prosecution is based upon eyewitness account, and therefore, this Court is called upon to appreciate, whether the testimonies of the prosecution witnesses coupled with the documentary evidence and other materials has conclusively established the guilt on the part of the accused?.

26. P.W.1 is the father of the deceased Muthusamy and P.W.8 and father-in-law of A2. In Ex.P.1-the complaint given by P.W.1 to P.W.14, P.W.1 did not specifically state about A1 strangling the neck of the deceased by using his hands or putting his foot on the neck of the deceased and whereas, during the course of his testimony, he deposed, in chief examination, that after the occurrence was over, he contacted his son P.W.8 over the phone and was waiting for his arrival and P.W.8 told that he informed his relatives and after their arrival, he proceeded along with P.W.8 and lodged a complaint-Ex.P.1 at about 12 mid noon of that day. As pointed out by the learned counsel for A2, as per Ex.P.1, the complaint was given at about 10.00 a.m., whereas P.W.1 in his chief-examination had stated that the complaint was lodged at 12 noon on 13.05.2014 and it is a vital discrepancy. However, this Court is unable to agree with the said submission for the reason that though there is some discrepancy as to the exact time when the complaint was given, it is to be remembered at this juncture that the trial of the case had taken place after a period of one year and the witnesses being villagers, minor discrepancies are bounded to occur in their testimony. P.W.1 in his cross-examination had stated that the police party came to the spot between 5.00 and 6.00 a.m., in the morning on 13.05.2014, that the services of the sniffer dog was also utilised. It is the testimony of P.W.1 that



police asked him as to the manner in which the occurrence took place and recorded his statement as well as the statement of his wife P.W.2 and obtained their signature and also recorded the statement of the neighbours and obtained their signatures also and at about 08.00 a.m., on 13.05.2014, the police took them (P.Ws.1 and 2) to the police station and also took the body of the deceased in an ambulance and P.W.1 along with P.W.2 were waiting in the police station till the arrival of his son P.W.8 and at that time he saw his daughter-in-law/A2 in the police station.

27. It is pertinent to point out at this juncture that according to the prosecution, Ex.P.1-complaint came to be lodged at about 10.00 a.m., on 13.05.2014 and the son of P.W.1, namely, P.W.8 had signed as a witness and the original of Ex.P.1 and FIR, after registration, was despatched through P.W.12 at about 10.30 a.m on 13.05.2014 and it was handed over to the Judicial Magistrate, Srivaikundam at about 15.15 hours on the same day. As rightly pointed out by the learned counsel for the appellants, P.W.1 in his evidence in cross has very categorically deposed that the police came to the spot along with the Inspector of Police, Sub Inspector of Police between 5.00 and 6.00 a.m., on 13.05.2014 and his statement as well as the statement of his wife P.W.2 were recorded at about 8.00 a.m. on the same day. He has further deposed that the statements of the nearby residents were also recorded by the police. However, the said statements of P.Ws.1 and 2 recorded at 8.00 a.m on 13.05.2014 did not see the light of the day and this, in the considered opinion of the Court was the first information. The above view is fortified by the fact that P.W.12-the constable, who took the original of Ex.P.1 and FIR to the jurisdictional Magistrate Court, in cross-examination, had stated that the distance to the Magistrate Court from the police station was about 6 k.m. and if he goes by a vehicle, he can reach the Court within 10 minutes. He has further deposed that on that day, he went by two-wheeler and despite a specific question being put to P.W.12, as to the belated submission of Ex.P.1 and FIR, he has failed to offer any plausible explanation and P.W.16- investigating officer has also failed to offer any plausible explanation for the said delay.

28. A perusal of the testimonies of P.Ws.1 and 2 coupled with the testimony of P.W.16 in cross-examination would also disclose that very many improvements have been made by P.Ws.1 and 2, during the course of their oral evidence before Court. P.W.16 in his cross-examination had deposed that P.Ws.1 and 2, during the course of investigation did not state anything as to the strangling of the neck of the deceased by A1 and they also did not say that the deceased was attacked by A1 and A2. It is to be remembered at this juncture, that as per Ex.P.3-postmortem report coupled with testimony of P.W.19-postmortem doctor, the deceased died on account of asphyxia and not on account of cumulative effective of the injuries. Therefore, the testimony of the eye witnesses namely, P.Ws.1 and 2 seeing A1 strangling the neck of the deceased assumes that significance and from the testimony of P.W.15 in cross-



examination clearly reveals that they did not specifically state seeing A1 strangling the neck of the deceased.

29. It is also pointed out by the learned counsel for the appellants that the initial statements recorded had reached the Court on 13.05.2014 and the further statements of P.Ws.1 and 2 recorded by P.W.16 had reached the jurisdictional Magistrate Court, only after the filing of the final report, for which also no plausible explanation has been offered.

30. The learned counsel appearing for the appellant/A1 in CrI.A.(MD).No.289 of 2014 has placed reliance upon the judgment rendered by a Division Bench of this Court in **2012 (3) MWN (Cr.) 266 (DB) [Ramachandran and others vs. The Inspector of Police, Tirupur]**, wherein, in paragraph No.27, it is observed as follows:

"27.Right from the moment FIR was registered under Section 154 Cr.P.C. the FIR, the documents seized, the case-properties recovered and statement of witnesses recorded under Section 161 Cr.P.C., must reach the concerned Court with least delay. As already stated it is to prevent embellishment of true version as to the occurrence and false implication of innocent persons. Because, every delay in submitting these documents to the Court will give much scope and chance for interpolation, story etlling and any unreasonable and unexplained delay on this account will affect the credibility and the quality of the evidence of prosecution witnesses, more particularly eyewitnesses and key-witnesses in a case."

31. In this regard, it is relevant and useful to refer to the decision rendered by a Division Bench of this Court 1974 LW crl 190(Karunakaran Jabamani Nadar case, it is relevant to extract the following paragraphs:

"It is imperative that the following documents should be despatched immediately, without any delay by the investigating officers to the Sub-Magistrate. The Station-House Officer should record the time of the actual despatch of the various documents in the various registers, particularly, the statement recorded under S.154 of the CrI.P.C. On receipt of the said documents, the Magistrate should initial the same, nothing there in the time and date of the receipt of those documents. This would provide the only judicial safeguard against subsequent fabrication of such documents in grave crimes. Therefore, as the Manual of Instructions for the Guidance of Magistrates in the Madras State does not contain any instructions to the Magistrates in this regard, we suggest that the same may be brought up-



to-date by incorporating in it the circulars which had been issued from time to time for the guidance of the Magistrates. The following are documents of special importance which, should be despatched by the investigating officers without any delay to the Magistrates and they should bear the initials of the Magistrate with reference to both the time and date of their receipts:

1. The original report or complaint under S.154 of the CrI.P.C.

2. The printed form of the F.I.R. (first information report) prepared on the basis of the said report or complaint.

3. Inquest reports and statements of witnesses recorded during the inquest.

4. Memo sent by the Station House Officers to doctors for treating the injured victims who die in the hospital subsequently and the history of the case treatment.

5. Memo sent by the doctor to the police when a person with injuries is brought to the hospital, or the death-memo sent by the doctor to the police on the death of the person admitted into the hospital with injuries.

6. Observation mahazars and mahazars for the recovery of material objects, search lists and the statements given by the accused admissible under S.27 of the Evidence Act, etc. prepared in the course of the investigation.

7. The statements of witnesses recorded under S.161(3) of the CrI.P.C.

8. Form No.91, accompanied by material objects."

32. The crucial documents namely original of Ex.P1 and FIR, though handed over to PW13, had reached the jurisdictional magistrate court belatedly and the delay coupled with the fact that earliest statement recorded from PWs.1 and 2, as pointed out earlier, have not seen the light of the day, and coupled with the material contradictions in the testimony of P.Ws.1 and 2 as to they actually witnessing the occurrence creates a grave doubt in the case projected by the prosecution.

33. The learned counsel for the appellant in CrI.A.(MD). No.406 of 2017 has drawn the attention of this Court to judgment in **2017 (1) MWN (Cr.) 161 (DB)**, wherein, in paragraph Nos.23 and 24, a Division Bench of this Court, after taking note of the factual circumstances of the said case, observed as follows:

23. When the First Information Report was registered at 8.00 p.m., it is not explained to the



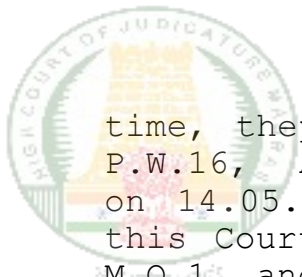
Court as to how PW7-Head of the Sniffer Dog Squad was summoned to arrive at the place of occurrence at 7.00 p.m., itself.

24. According to the evidences of PW12 & PW13 until 8.00 p.m., no information was received about the occurrence in the Police Station. It is not explained as to what was the earliest information which was received by the Police, which made them to come to the place of occurrence at 5.00 p.m. This also creates doubt in the case of the prosecution."

34. It is the categorical testimony of P.W.1 in his cross-examination that the Inspector of Police, Sub Inspector of Police as well as the Sniffer Dog came to the spot even at about 5.00 or 6.00 a.m., on 13.05.2014 and the statement of P.Ws.1 and 2 were recorded at about 8.00 a.m., on the same day and P.W.16, as pointed out earlier did not offer any explanation as to the said statement recorded from the P.Ws.1 and 2 and this statement of P.Ws.1 and 2, in the considered opinion of this Court, was the earliest statement as to the occurrence.

35. It is also pointed out by the learned counsel appearing for A2 that assuming P.Ws.1 and 2 have spoken the truth, during the course of their testimony as to the strangling of the neck of the deceased by A1, two different theories have been projected, viz., one version is that while the deceased was lying on the cot, A1 put his foot on his neck and pressed him, whereas the other version was that he was dragged outside the house and was done to death. In the considered opinion of the Court, this is a material contradiction which affects the case of the prosecution. It is a vital/great improvement in the testimonies of P.Ws.1 and 2 in their oral evidence for the simple reason that to corroborate the medical evidence, P.Ws.1 and 2 have made the said improvement as it stands to reason that as per the postmortem report marked as Ex.P.3, it is the medical evidence that compression over the neck has resulted in asphyxia (Throttling) and consequently Muthusamy died. Therefore, to corroborate the medical evidence, improvements have been made by P.Ws.1 and 2.

36. The other independent eye witnesses P.Ws.3, 4 and 15 did not support the case of the prosecution and they were treated as hostile witnesses and the prosecution had heavily relied upon the testimonies of the P.Ws.1 and 2 coupled with the recovery to sustain their case. It is also pertinent to point out at this juncture that M.O.1-iron rod was recovered pursuant to the confession statement of A2 and unfortunately, the place, in which the said article was hidden was not marked as the admissible portion in the confession. Though relevant words in that record is very much available in the confession statement of A2, the arrest of A2 and recovery of M.O.1 is also highly doubtful for the reason that, even according to the P.W.1 and his wife P.W.2, they were taken to the police station where their statements were recorded on 13.05.2014 and at that



time, they saw A2 in the police station whereas according to the P.W.16, A2 was arrested at about 4.15 p.m on the next day, i.e., on 14.05.2014. Therefore, in the light of the said infirmities, this Court is unable to believe the arrest of A2 and recovery of M.O.1, and simultaneously, the relevant admissible portion of the confession statement of A2 cannot be believed for the reason that the exact place in which M.O.1 was hidden has not been specifically marked as admissible.

37. In the considered opinion of this Court, the above said infirmities had gone deep into the root of the matter and had shaken the very foundation laid by the prosecution charging both the accused for the commission of offence, and therefore, it is a settled position of law that the benefit of doubt, on account of the said infirmities, always enure in favour of the accused, and therefore, A1 and A2 are awarded benefit of doubt.

38. In the result, these Criminal Appeals are allowed. The conviction and sentence imposed on the appellants by the learned II-Additional District and Sessions Judge, Thoothukudi, made in S.C.No.183 of 2015 dated 15.04.2016 is set aside and both the accused/appellants are acquitted of the charge under Section 302 r/w 34 IPC. The fine amount, if any paid, shall be refunded to them and the bail bonds executed by the accused shall stand terminated.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

PJL
To

- 1 THE JUDICIALMAGISTRATE, SRIVAIKUNDAM.
- 2 THE CHIEF JUDICIAL MAGISTRATE, THOOTHUKUDI.
- 3 THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, THOTHUKUDI.
- 4 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 5 THE INSPECTOR OF POLICE,
ALWARTHIRUNAGARI POLICE STATION, THOOTHUKUDI DISTRICT.

+1CC TO MR.F.DEEPAK, Advocate Sr. No. 73841

+2CC TO MR.N.ANANDA KUMAR, Advocate Sr. No. 73825

JUDGMENT MADE IN
Crl.A(MD)Nos.289 and 406 of 2017
05.07.2019

GRC(CO)