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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 04.11.2019

JUDGMENT DELIVERED ON : 07.11.2019

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.A(MD)No.51 of 2018

and

M.P. (MD)No.2038 of 2018

Krishnamoorthy

.. Appellant/Sole Accused

Vs.

State represented by,
The Inspector of Police,
Kallikudi Police Station,
Madurai District.

(Crime No.57 of 2011)

.. Respondent / Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure, against the Judgment, dated 29.01.2018, passed in S.C.No.382 of 2015 by the learned I-Additional District and Sessions Judge, Madurai, Madurai District, and to acquit the appellant herein.

For Appellant : Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu

For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor



JUDGMENT

This Criminal Appeal has been filed by the appellant against the Judgment of the I-Additional District and Sessions Court, Madurai, made in S.C.No.382 of 2015, dated 29.01.2018, convicting the appellant for an offence under Section 302 of IPC., and sentencing him to undergo Life Imprisonment and to pay a fine of Rs.10,000/- and in default, to undergo one year Rigorous Imprisonment.

2. The case of the prosecution in brief:

The appellant is said to have taken a house on rent at Koduvai Village, near Avinasipalayam and he was doing milk business. The wife of the appellant developed an illicit intimacy with one Sathish, who is the son of the house owner. This came to be known to the house owner and he asked the appellant to vacate the house and accordingly, the house was vacated. However, the illicit intimacy continued and the wife of the appellant is said to have eloped with the said Sathish along with the child. The appellant therefore, preferred a complaint before the Nalatinpudhur Police Station and an FIR came to be registered in Crime No.123 of 2011 for an offence under Section 366 of IPC., on 07.04.2011.

3. The *defacto complainant*, who is the Sub Inspector of Police (P.W.1), on instructions of the Inspector of Police, took the deceased Sathish, Murugeswari (P.W.9) and the child along with the accused and other family members and constable Murugan(P.W.2), in a car (M.O.3) and they were returning to Nalatinpudhur Police Station on 07.04.2011, at about 10.45 p.m., through Thirumangalam to Virudhunagar National Highway. At that time, the car was driven by Raveendran (P.W.6) and next to him, the deceased was seated and next to the deceased, P.W.1 was seated. Behind them, in the back seat, Damodharan (P.W.5), the appellant and Radhakrishnan (P.W.3) were seated. Behind that Rajendran(P.W.4) and the Head Constable Murugan (P.W.2) were seated. Near them, the wife of the appellant, Murugeswari (P.W.9) was also seated along with the child. When the car came near a overbridge at Dindigul, the child started crying and the appellant got down to buy milk and he was accompanied by Damodharan and others, who also wanted to drink tea. The deceased was under the control of P.W.1 and the wife of the appellant was taken care by P.W.2.

4. All of them got into the car and when the car was proceeding towards Kallikudi, all of a sudden, the appellant is said to have abused the deceased and pulled his head and caused a cut injury in his neck and thereby, caused the death of the deceased.



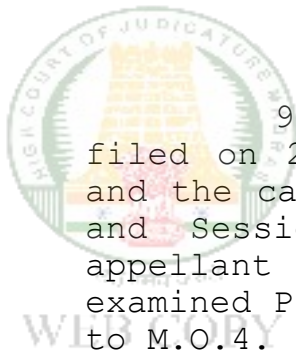
5. The Special Sub Inspector (P.W.1) saw the appellant with the blood stained knife(M.O.1) and the same was recovered. The deceased was taken to the Government Hospital, Virudhunagar and the Doctor, who examined him at about 11.30 p.m., declared him as brought dead.

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6. P.W.1 returned back to the police station on 08.04.2011 at 1.00 a.m., in the morning and based on his complaint (Ex.P.1), an FIR was registered (Ex.P.6) by the Special Sub Inspector of Police, Kallikudi Police Station (P.W.13) in Crime No.57 of 2011 for an offence under Section 302 of IPC. The express FIR (Ex.P.6) was sent to the Judicial Magistrate, Thirumangalam, and it reached the Court on 08.04.2011 at about 6.00 a.m.

7. The investigation was taken up by the Inspector of Police (P.W.16) and he came to the scene of crime at about 1.30 a.m., and prepared the observation mahazer (Ex.P.2) and rough sketch (Ex.P.11) in the presence of witnesses. He thereafter recovered the car (M.O.3), which was parked in the police station in the presence of witnesses under seizure mahazer (Ex.P.10). He also recovered the blood stained knife (M.O.1) from the car under seizure mahazer (Exs.P.12 and P13). Further, the blood stained rubber sheet was also recovered (M.O.4).

8. The investigating officer proceeded to record the statements of the witnesses under Section 161 (3) of Cr.P.C. He went to the Virudhunagar Government Hospital on 08.04.2011 at about 7.00 a.m., and conducted the inquest over the body of the deceased in the mortuary and he also made a request to the Revenue Divisional Officer (P.W.15) to conduct an inquest under Section 176 of Cr.P.C. The appellant was arrested on 08.04.2011 at about 1.45 p.m., and he was taken to the Government Hospital, Virudhunagar, as per the request made by the Revenue Divisional Officer and the appellant was taken to the hospital at about 06.30 p.m. The Revenue Divisional Officer recorded the statement of the appellant and also all the other witnesses. Thereafter, the appellant was produced before the Magistrate and he was remanded to judicial custody. The recovered material objects were sent to the Court under Form 95 (Ex.P.14 series). The inquest over the body of the deceased was conducted on 09.04.2011 at about 10.00 a.m., by the Revenue Divisional Officer, Aruppukottai and he also proceeded to record the statements of other witnesses. The body was sent for postmortem and the postmortem was conducted by P.W.14. The dead body was handed over to the relatives. Since the Inspector of Police was transferred, the investigation was taken over by P.W.17 and he continued with the investigation and he received the biological report, serological report and the postmortem certificate (Exs.P4, P5 and P7).



9. On completion of the investigation, a final report was filed on 20.06.2012, before the Judicial Magistrate, Thirumangalam and the case was committed to the file of the I-Additional District and Sessions Judge, Madurai. Charges were framed against the appellant for an offence under Section 302 of IPC. The prosecution examined P.W.1 to P.W.17, marked Ex.P1 to Ex.P14 and exhibited M.O.1 to M.O.4.

10. After the completion of the examination of witnesses, the Court below questioned the appellant under Section 313 (1)(b) of Cr.P.C., by putting the incriminating materials collected against him, during the course of trial and he denied the same as false.

11. The learned I-Additional District and Sessions Judge, Madurai, after considering the facts and circumstances and after analysing the oral and documentary evidence, came to the conclusion that the prosecution has proved the case beyond reasonable doubts and therefore, proceeded to convict and sentence the appellant in the manner stated supra.

12. Mr.V.Kathirvelu, learned Senior Counsel, appearing on behalf of the appellant made the following submissions:

- The deceased was admittedly in police custody and the death has occurred while in police custody. However, the mandatory procedure contemplated under Section 176 (1-A) of Cr.P.C., has not been followed and thereafter, the entire investigation is vitiated. In order to substantiate the submissions, the learned Senior Counsel relied upon the following Judgments:

(a) *P.Pugalenthil v. State rep. by the Director General of Police, Chennai and others*, reported in 2015(1) MLJ (crl)424;

(b) *Chinnasamy and Others v. RDO, Trichy*, reported in 2015(3) MLJ (Crl) 710;

(c) *R.Kasthuri v. State by the District Collector, Cuddalore and others*, reported in 2015(1) MLJ (crl)455.

- It is the case of the prosecution that P.W.1 had taken the deceased and the wife of the appellant for an enquiry based on the FIR registered in Crime No.123 of 2011. This FIR was not even produced before the Court and the Inspector, who is said to have directed P.W.1 to enquire the case was not even examined before the Court.
- P.W.1 and P.W.2 are police officials, who had gone to Avinaspalayam Police Station and were returning back to



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Nalatinpudhur Police Station in the car. Neither the pocket notebook of P.Ws.1 and 2 have been produced before the trial Court nor the GD entry in both the police stations have been produced before the Court.

- The occurrence is said to have taken place on 07.04.2011 at about 10.45 p.m., and the deceased is said to have been taken to the Virudhunagar Government Hospital and the deceased was declared as brought dead. Neither the Accident Register was marked nor the Doctor was examined.
- The Doctor, who conducted the postmortem (P.W.14), after seeing the weapon has specifically stated that the injury that was recorded in the body of the deceased could not be caused with that weapon.
- Revenue Divisional Officer is said to have conducted an enquiry and submitted a report before the Collector (Ex.P.9). This report has not even been marked before the Court.
- The statement of P.W.1 was submitted twice before the Magistrate Court. The first time, it was submitted on 09.04.2012 and thereafter, it was submitted on 29.08.2012 along with the statement of P.W.2. The statement of P.W.10, who is the father of the deceased reached the Court only on 11.07.2012. At every stage, there was a delay and the prosecution has not explained the delay.
- The investigating officer (P.W.16) has not investigated anything regarding the enquiry report submitted by the Revenue Divisional Officer and he has not even recovered the pocket notebook of P.W.1 and P.W.2.
- None of the independent witnesses have supported the case of the prosecution including P.W.9, who is the wife of the appellant and the entire case as projected by the prosecution is false, more particularly, since no independent enquiry has been conducted by the Magistrate as contemplated under Section 176 (1-A) of Cr.P.C., and thereafter, the conviction and sentence imposed by the trial Court is liable to be set aside.

13. Per contra, Mr.M.Chandrasekaran, learned Additional Public Prosecutor, appearing on behalf of the State, made the following submissions:

- An enquiry was conducted by the Revenue Divisional Officer and eventhough the report has not been marked, the letter of the Revenue Divisional Officer to the District



Collector, has been marked as Ex.P.9 and the same clearly explains the various witnesses examined and the conclusion arrived and therefore, there was an independent enquiry, which was conducted in this case apart from the investigation conducted by the police.

- Merely because the procedure under Section 176 (1-A) of Cr.P.C., has not been followed, the same will not in any way vitiate the investigation.
- The father of the deceased, namely, P.W.10, has spoken about the incident and also the motive behind the incident. He has also spoken about the deceased picked up by the police along with all the other persons including the accused in the car.
- The evidence of P.W.14, who is the postmortem Doctor clearly explains the injury found in the body of the deceased.
- The evidence of P.W.7, who is the owner of the car clearly shows that it was his car and he has also spoken about the blood stains found inside the car.
- There is nothing to discredit the evidence of P.W.1 and P.W.2 and the prosecution has proved the case beyond reasonable doubts and the same does not require interference.

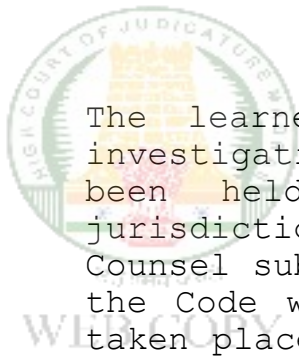
14. This Court has carefully considered the submissions made on either side and has assessed the oral and documentary evidence available before the Court.

15. It is the admitted case of the prosecution that the deceased was in the custody of the Special Sub Inspector of Police (P.W.1), who had taken custody of the deceased along with the wife of the appellant (P.W.9), for enquiry, pursuant to the FIR registered in Crime No.123 of 2011. The relevant portion in the evidence of P.W.1 is extracted hereunder:

ஆஜர் எதிரி என்னிடம் புகார் கொடுத்ததலிருந்து சம்பவம் நடக்கும் கால கட்டம் வரை எனது கட்டுப்பாட்டில் இருந்தார் என்றால் சரிதான்.

Therefore, it is clear from the evidence that the deceased was under the complete control/custody of P.W.1.

16. The learned Senior Counsel appearing on behalf of the appellant has raised an important contention to the effect that the mandatory procedure as contemplated under Section 176 (1-A) of Cr.P.C., ought to have been followed in this case, since the death has occurred while the deceased was in the custody of the police.



The learned Senior Counsel submitted that in addition to the investigation that was done by the police, an enquiry ought to have been held by the Judicial Magistrate, within whose local jurisdiction the incident had taken place. The learned Senior Counsel submitted that Section 176 (1-A) of Cr.P.C., was inserted in the Code with effect from 23.06.2006 and the present incident had taken place in the year 2011 and therefore, when this incident took place, the above said provision was in force. The learned Senior Counsel further contended that the requirement for conducting an independent enquiry in view of the fact that the death took place, while the deceased was in the custody of the police, was perfectly understood by P.W.16, who initially investigated this case. However, the investigating officer went wrong in directing the Revenue Divisional Officer, Aruppukottai, to conduct an enquiry. This procedure according to the learned Senior Counsel is in complete violation of the mandate that has been prescribed under Section 176 (1-A) of Cr.P.C. The learned Senior Counsel had placed reliance upon the Judgments that have been referred supra in order to substantiate his submissions.

17. It will be relevant to take note of the above Judgments cited by the learned Senior Counsel.

(a) This Court in *R.Kasthuri v. State rep. by the District Collector, Cuddalore and others*, reported in 2015(1) MLJ (crl)455 has held as follows:

" 32. The amendment to sub-section (1) of Section 176 and introduction of sub-section (1A) was made on the recommendations of the "National Police Commission" in its 4th Report. And, Hon'ble Justice Malimath, in his report, has very categorically stated that an inquiry to be held by a Magistrate shall not be equated to an investigation by the police. It has also been stated that by bringing back judicial inquiry under sub-section (1A), there shall be no merger of the Judiciary with the Executive. The Executive shall always be kept apart from the Judiciary.

33. From the above reports, which are the foundation for the amendment of sub-section (1) of Section 176 and introduction of sub-section (1A) of Section 176 of the Code, the conclusion that an inquiry held by a Judicial Magistrate or Metropolitan Magistrate is a judicial inquiry in character and the same does not either form part of the investigation or part-take the character of investigation is fortified. Thus, I hold that the Judicial / Metropolitan Magistrate shall not submit



a report either to the District Collector or to the Government.

34. Then, What next? Often, this question as to what the Magistrate should do on completing the inquiry comes up for debate. The answer is very simple. The Judicial / Metropolitan Magistrate, after completing the inquiry, shall keep the record on his file along with the FIR and the other documents submitted by the police. But, the Magistrate shall furnish copies of the statements and other documents collected by him to the investigating officer as soon as the inquiry is over. The police officer shall not stop the investigation even for a moment after the registration of the FIR and he shall continue to conduct investigation swiftly and thoroughly. On receipt of the copies of the records from the Judicial / Metropolitan Magistrate relating to the inquiry under sub-section (1A) of Section 176 of the Code, the investigating officer shall use the same for his further investigation. This is like a Dying Declaration; Confession recorded under section 164 of the Code; Statements of Witnesses recorded under Section 164 of the Code and report of Test Identification Parade conducted by a Magistrate. Indisputably, the functions of the Magistrate viz., recording dying declaration, confession under section 164 of the Code, statements of the witnesses under Section 164 of the Code and conducting test identification parade do not form part of investigation and they do not in any manner impair the investigation. Like, the documents viz., dying declaration, confession and statements under 164 of the Code, report on test identification parade that are kept along with the case records and copies are furnished to the police for taking forward the investigation in the right direction, the record of the proceeding under sub-section (1A) of the Code conducted by a Judicial/Metropolitan Magistrate shall also be kept as part and parcel of the case records. On completing the investigation, when police report is submitted under section 173 of the Code, the learned Judicial/Metropolitan Magistrate shall act according to Section 190 of the Code. For any reason if the accused is summoned, he shall be entitled for copies of the record of the proceedings under Section 176(1A) of the Code, as provided under Section 207 of the Code. This is



irrespective of the fact whether the prosecution relies on such documents or not. As has been held by the Hon'ble Supreme Court in V.K.Sasikala v. State rep. by Superintendent of Police, 2012 (9) SCC 771 furnishing copies of the said record to the accused is in tune with the fair trial to be afforded to the accused under Article 21 of the Constitution of India. It is needless to point out that the statements of the witnesses recorded during inquiry under sub-section (1A) of Section 176 of the Code could be used either for corroboration or for contradiction of the makers of the statements during trial.

35. In the instant case, the learned Judicial Magistrate -II, Panruti has held an inquiry rightly under sub-section (1A) of Section 176 of the Code, but, he had submitted the report to the District Collector and the District Collector, in turn, submitted the same to the Government. As I have already concluded, this procedure adopted by the learned Magistrate is illegal. The learned Magistrate ought not to have submitted his report to the District Collector.

36. Nextly, the Inspector of Police who registered the case, as it is seen from the counter, did not conduct investigation at all. Perhaps, he was under the mistaken impression that the inquiry held by the learned Judicial Magistrate under sub-section (1A) of Section 176 of the Code was a bar for him to do investigation. I wish to reiterate that the investigation by the police and inquiry by a Judicial / Metropolitan Magistrate would not preclude each other as they operate in different spheres. The Inspector of Police ought to have investigated the case according to law.

37. Nextly, the Government of Tamil Nadu under Letter No.4341/L & O. E/2011-1 dated 13.10.2011 has dropped all further action in the matter accepting the report of the Judicial Magistrate-II, Panruti, thus, equating the inquiry held by the Magistrate to an investigation by the police and as a final conclusion. The said order of the Government is undoubtedly illegal. Therefore, I have to set aside the Letter of the Secretary to Government, Public (Law & Order) Department, Secretariat, Chennai, in Letter No.4341/L&O.E/2011-1, dated 13.10.2011 dropping all further action in the matter. The matter needs thorough investigation.



38. Now, the last question is, to whom the investigation should be entrusted to. Though in the original petition it is stated that investigation should be conducted by Deputy Superintendent of Police since the deceased belonged to scheduled caste, as per the provisions of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Rules, I am not persuaded by the said contention. Though the deceased belonged to scheduled caste since the alleged attack on him was not on account of the fact that he belonged to scheduled caste, the provisions of The Scheduled Caste and Scheduled Tribes [Prevention of Atrocities] Act, 1989 and the rules thereunder are not applicable. At the same time, the investigation cannot be entrusted to the Inspector of Police. In this regard, I may refer to the judgment of the in People's Union for Civil Liberties and another v. State of Maharashtra and others, 2014 (11) Scale 119. As has been directed by the Hon'ble Supreme Court, since it is a case of custodial death, an independent investigation into the incident should be conducted either by CB CID or by a team of police officers from any other police station under the supervision of a senior officer. Going by the facts of the case, in my considered opinion, it will be in the interest of justice to entrust the investigation to the CB CID for investigation by an officer not below the rank of Deputy Superintendent of Police. I hasten to add that in this order, I have not expressed any opinion regarding the cause of death as to whether it was natural death or homicidal death. The observations made by the learned Judicial Magistrate II, Panruti in his report are also not binding on the investigating officer on this aspect. It is for the investigating officer to thoroughly investigate the matter. So far as the relief of compensation is concerned, I am not inclined to grant the same in this original petition since I am ordering for investigation."

(b) This Court in Chinnasamy and Others v. RDO, Trichy, reported in 2015(3) MLJ (Crl) 710, has held as follows:

"18. Nextly, as rightly pointed out by the learned counsel for the appellants, the procedure adopted by the Revenue Divisional Officer/Executive Magistrate in filing the private complaint is wholly illegal. In this regard, I may say that prior to the



introduction of Sub-Section (1-A) of Section 176 of Code of Criminal Procedure, by amendment Act 25 of 2005, with effect from 23.06.2006, the enquiry into the case in respect of custodial death were to be made by the Executive Magistrate, but after introduction of Sub-section (1-A) of Section 176 of the Code, the power of the Executive Magistrate to hold such enquiry in respect of custodial death has been taken away and instead such power has been given only to the jurisdictional Judicial Magistrate. Such an enquiry to be held by the jurisdictional Magistrate is not a substitute for the investigation to be done by the Police and it is only in addition to the investigation to be done by the Police. As to how such enquiry is to be held by a Judicial Magistrate and as to how the report of the Magistrate is to be used have been extensively dealt with by me in *R.Kasthuri Vs. State*, rep. by the District Collector, Cuddalore, reported in (2015) 1 MLJ (Crl.) 455 and in *P.Pugalenthil Vs. State*, rep. by the Director General of Police, Chennai, reported in (2015) 1 MLJ (Crl.) 424. Therefore, I do not want to repeat the same. I am only hopeful that the authorities concerned will scrupulously follow the mandate of law contained in Sub-section (1-A) of Section 176 of the Code, in the light of the judgments, cited supra. Above all, I do not understand as to why the executive Magistrate, who conducted enquiry purportedly under Section 176 of the Code and laid the private complaint, was not examined in this case.

19. In view of the foregoing discussions, I hold that the prosecution has failed to prove the case beyond reasonable doubts against the accused and the accused are, therefore, entitled for acquittal."

(c) This Court in *P.Pugalenthil v. State* rep., by the Director General of Police, Chennai and others, reported in 2015(1) MLJ (crl)424, has held as follows:

"8.As per the said law, in the instant case, inquiry should have been conducted by the Judicial Magistrate but, that was not done. But, strangely, in this case, the Revenue Divisional Officer who had no authority or power to hold inquiry has conducted inquiry assuming to himself power under Section 176 (1) Cr.P.C. Of course, as we have already noticed, prior to 23.06.2006, he had such power to inquire, but, not thereafter. Therefore, the inquiry held by



the Revenue Divisional Officer, in this case, is wholly without jurisdiction. Apart from that, surprisingly, there was no investigation at all done by the police in this case, probably, under the mistaken impression that the inquiry held by the Revenue Divisional Officer was a bar for the police to hold investigation. Of course, under Section 176 (1) Cr.P.C., an inquiry by an Executive Magistrate is either instead of or in addition to the investigation. But, such inquiry under Section 176 (1) Cr.P.C., is confined only to the cause of death and the scope of such inquiry cannot be widened any more so as to equate the same to the police investigation.

9. At any rate, in this case, as I have already concluded, the inquiry held by the Revenue Divisional Officer is wholly without jurisdiction. In these circumstances, the only course now available for the Court is to issue a direction to the police to investigate the matter. As has been held by the Hon'ble Supreme Court in *People's Union for Civil Liberties and another v. State of Maharashtra and others*, 2014 (11) Scale 119, such investigation should be done by a police officer who is above the rank of the officer in whose custody, the deceased had died. In this case, the deceased died while he was in the custody of the Superintendent, Central Prison, Salem. When this was pointed out, the learned Advocate General submitted that the investigation may be entrusted to one Mr.M.Ramakrishnan, Assistant Commissioner of Police, C.C.B., Salem City. The said statement is recorded. In addition, as mandated by Sub-Section (1A) of Section 176 Cr.P.C., the jurisdictional Judicial Magistrate shall also hold inquiry in the light of the guidelines issued by this Court in Crl.O.P.No.20008 of 2013.

10. In view of the same, I hold that the report submitted by the Revenue Divisional Officer, Salem and the consequential order passed by the Government are without jurisdiction and hence, the same are liable to be set aside and the case should be entrusted to Mr.M.Ramakrishnan, Assistant Commissioner, C.C.B., Salem City to investigate the same and to submit an appropriate final report to the Court. While doing investigation, Mr.M.Ramakrishnan shall have regard to the guidelines issued by this Court in Crl.O.P.No.20008 of 2013, dated 19.12.2014".



18. The above Judgments have dealt with the scope of Section 176 (1-A) of Cr.P.C., at length. This Court has categorically held that in all cases of death that happens in police custody, enquiry shall be held by the jurisdictional Judicial Magistrate and a report shall be prepared. This will be kept on record along with the other materials collected by the investigating officer in the course of investigation. This will be used by the investigating officer during his investigation. This is done only to ensure that the investigation proceeds forward in the right direction. The copies of the record of the proceedings of the Judicial Magistrate under Section 176 (1-A) of Cr.P.C., whether it was relied upon or not, shall be furnished to the accused along with all the other materials under Section 207 Cr.P.C.

19. In the present case, admittedly, the death has happened while the deceased was very much in the custody of the police. Therefore, the investigating officer (P.W.16) ought to have resorted to the procedure under Section 176 (1-A) of Cr.P.C. However, he has proceeded to hand over the enquiry to the Revenue Divisional Officer, Arupukkottai and in the considered view of this Court, this procedure is completely wrong and the Revenue Divisional Officer enquiry under Section 176 (1) of Cr.P.C., only pertains to the cases mentioned under Section 174(1) of Cr.P.C., and it does not extend to any death that happens, while in the custody of the police.

20. The amendment to Sub Section 1 of Section 176 of Cr.P.C., was brought into the Code, pursuant to the recommendation of the National Police Commission, in its fourth report and the report of the Hon'ble Justice Malimath, only to ensure that a judicial inquiry is conducted in all cases arising out of the death, while in police custody and this independent inquiry is done by the Judicial Officer to independently ascertain the cause of the death, while the deceased was in police custody. This report given pursuant to the judicial inquiry and the statements of the witnesses recorded during inquiry under Section 176 (1-A) of Cr.P.C., could be used either for corroboration or for contradiction of the maker of the statements, during trial. This procedure helps to maintain a check and balance to find out the real truth behind the death of the deceased while in police custody. Unfortunately, in this case, this procedure has not been followed.

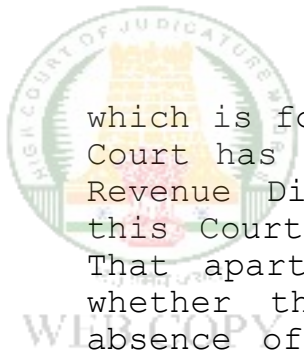
21. In the considered view of this Court, the non-compliance of the mandatory procedure under Section 176(1-A) of Cr.P.C., to a great extent affects the credibility and reliability of the investigation conducted by P.Ws.16 and 17. An independent inquiry by the jurisdictional Magistrate, would have certainly



juncture, we have to hold that the inquiry conducted by the Revenue Divisional Officer, Arupukkottai, under Section 176 (1) of Cr.P.C., is clearly without jurisdiction and therefore, the very relevance of the inquest report marked as Ex.P.8 and the letter sent to the District Collector marked as Ex.P.9, becomes questionable. In this case, the Revenue Divisional Officer, Arupukkottai, did not have the jurisdiction to examine witnesses and hence, this Court will not place reliance upon the statement of the witnesses that has been referred in the letter marked as Ex.P.9. Curiously in this case, the actual report of the Revenue Divisional Officer has not been marked and P.W.16 in his cross-examination categorically admits that he has not investigated regarding the report prepared by the Revenue Divisional Officer.

22. This Court will now proceed to independently assess whether the prosecution has made out a case through the evidence of other witnesses. P.W.1 was the Special Sub Inspector of Police, who had taken the deceased, Sathish, in M.O.3, car. The car was driven by Raveendran (P.W.6) and next to him, the deceased was sitting and next to the deceased, P.W.1 was sitting near the door. Behind them, P.W.5 was sitting near the door and next to him, the appellant was seated and next to him, Radhakrishnan (P.W.3) was seated. In the third row, which had two seats opposite to each other, one Rajendran (P.W.4) and the Head Constable, Murugan (P.W.2) were sitting. Near them, Murugeswari (P.W.9), who is the wife of the appellant was sitting along with the child. The car was halted near the Dindigul overbridge, since the child was crying for milk and the appellant and others wanted to have tea. The milk was brought by the appellant in a plastic bottle and after everybody were seated in the car, the car started proceeding further. At that point of time, when the car was nearing Kallikudi, the appellant is said to have abused the deceased and pulled his head and caused a cut injury in his neck. It is the specific evidence of P.W.1 that he never heard any voice/sound during the incident and he only felt that the head of the deceased is pulled backwards and thereafter, he saw the appellant with the blood stained knife (M.O.1). He specifically states that he did not see the incident since it was dark inside the car.

23. When a question was put to P.W.1 as to whether he had bodily searched the appellant, he admitted that he was searched in the police station, when he came there for giving the complaint and did not find him carrying any weapon. The knife in question has plastic handle of 10 cms and the knife portion is about 15 cms. It is clear from Ex.P.13. This means that the total size of the knife was about 25 cms. It is not known from where the appellant got this knife, when he was travelling in the car. The learned Additional Public Prosecutor wanted to rely upon the statement that is said to have been given by the appellant to the Revenue Divisional Officer,



which is found reference in the letter Ex.P.9 for this purpose. This Court has already held that the so called enquiry conducted by the Revenue Divisional Officer is beyond jurisdiction and therefore, this Court is not relying upon the statement referred in Ex.P.9. That apart, it was the duty of the prosecution to prove as to whether the appellant had actually procured the knife. In the absence of any such evidence, it becomes very difficult for this Court to presume that the appellant would have got hold of a knife, when he got down from the car to purchase milk for the child. It is also unbelievable that P.W.1 would not have seen the appellant cutting the neck of the deceased, who was sitting right next to P.W.1.

24. It is relevant to extract the injury that has been recorded in the postmortem certificate that has been marked as Ex.P.7.

"External Injuries:

Neck showed a cut injury of size 16x4x2 cm extending from left stern clavicular joint anteriorly and running obliquely upwards reaching 1 cm before midline posteriorly in the nape of neck. Right sided muscles cut. Right sided jugular vein and carotid cut. Trachea and oesophagus cut. Hyoid bone intact.

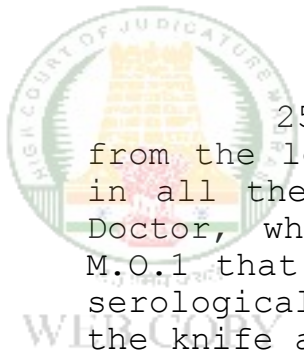
Internal Examination:

On opening thorax, no rib fracture noted. Both lungs were pale. Heart pale. No bleeding in thoracic cavity. On opening abdomen, Liver and Spleen were pale, both kidneys were pale. Stomach pale and empty. Intestines pale and distended with gas. Bladder empty and pale. No bleeding in peritoneal cavity. On opening skull membranes intact. Brain matter pale. No bleeding inside cranial cavity. Spinal column intact.

The following viscera sent for chemical analysis.

- 1. Stomach*
- 2. Intestine*
- 3. A piece of liver*
- 4. Kidney*
- 5. Hyoid bone*
- 6. 100 ml of preservative.*

Death would have occurred 36 to 48 hours prior to autopsy."



25. The above injury points out to the fact that it started from the left side of the neck and went up to the right, resulting in all the important nerves and muscles being cut. The postmortem Doctor, who was examined as P.W.14 has categorically stated that M.O.1 that was shown in the Court cannot cause such an injury. The serological report (Ex.P.5) shows in the remarks portion regarding the knife as "disintegrated".

26. The Head Constable, who was examined as P.W.2, almost reiterates what was stated by P.W.1 in his chief examination. As per the statement of P.W.1, P.W.2 was sitting in the seat behind the seat in which P.W.5, the appellant and P.W.3 were sitting. If really the incident had taken place, it is impossible that he could not have seen the incident which had happened right inside the car. The reasons given by P.W.1 and P.W.2 to the effect that there was no light inside the car also lacks credence, since everyone is seated so close to each other that any such incident would have been seen by everyone present in the car. The evidence of P.W.1 and P.W.2 that they did not see the incident is very artificial and unnatural.

27. It is surprising that the minimum that is required for the investigating officer (P.W.16) to have marked, in order to *prima facie*, establish the presence of P.W.1 and P.W.2 in the car, is their pocket notebook, which would have shown their movement from Avinasipalayam to Nalatinpudhur Police Station. Similarly, in order to show that they were present, the GD entry either at Nalatinpudhur Police Station or Avinasipalayam Police Station could have been summoned. This could have clinched the presence of P.W.1 and P.W.2 along with the appellant and the deceased. Eventhough, P.W.1 and P.W.2 admit that they maintain a pocket notebook and entry is made in the general diary, P.W.16 in his evidence states that he did not collect the pocket notebook of P.W.1 and P.W.2 or take any steps to summon the entry made in GD in either of the police stations.

28. The evidence of P.W.1 and P.W.2 shows that the deceased was taken in the car to the Virudhunagar Government Hospital and they were informed that the deceased was brought dead. Neither the Doctor, who examined the deceased nor the Accident Register was marked in this case.

29. P.W.1 is said to have taken the deceased in the car along with others for enquiry, pursuant to the FIR registered in Crime No.123 of 2011 and on the directions of the Inspector of Police of Nalatinpudhur Police Station, neither the FIR was marked nor the Inspector of Police, who had directed P.W.1 to conduct the enquiry, had been examined in this case.



30. P.Ws.3 to 6 and P.W.9, who had also travelled in the car, according to the prosecution, did not support the case of the prosecution and there is absolutely no evidence of any independent witness about all these persons travelling in the car, apart from the evidence of P.W.1 and P.W.2. Even the wife of the appellant, who is said to have eloped with the deceased along with the child, did not support the case of the prosecution and has categorically stated that she did not travel in the car.

31. The incident had taken place at about 10.45 p.m., on 07.04.2011 and the complaint itself was given only on 08.04.2011 at about 1.00 a.m., and the express FIR had reached the Court on 08.04.2011 at 6.00 a.m. There is absolutely no explanation as to why it took nearly 2 hours and 15 minutes for the complaint to be given in this case.

32. Yet another issue that has to be taken into consideration in this case is the delay in the 161 statements of the witnesses reaching the Court. The 161 statements of P.W.1 and P.W.2 reached the Court only on 29.08.2011. Similarly, the statement of P.W.10, who is the father of the deceased had also reached the Court only on 11.07.2011. When P.W.16 was questioned about the same in the cross examination, he specifically states that he has no explanation for the enormous delay. Therefore, it also makes this Court infer that there was a lot of deliberation, which resulted in preparing the statement and submitting it to the Court with enormous delay. It is also surprising that the seizure mahazar marked as Ex.P.12 and Ex.P.13 are only xerox copies and there is no explanation given as to why the original seizure mahazar was not marked in this case. Therefore, doubts regarding the recovery of the material objects as projected by the prosecution also gets strengthened.

33. A combined reading of the entire evidence available on record and in view of the above discussion, this Court is of the considered view that the prosecution has miserably failed to prove the case against the appellant beyond reasonable doubts. This Court is rendering this finding by independently assessing the oral and documentary evidence and after giving a specific finding that the credibility and reliability of the investigation conducted by the prosecution without complying with the mandatory requirements under Section 176(1-A) of Cr.P.C., itself raises a big question mark on the investigation done in this case. It is clear that this incident has not taken place in the manner as projected by the prosecution.

34. In the result, the conviction and sentence imposed by the Court below is liable to be interfered with and the Judgment of



the trial Court in S.C.No.382 of 2015, dated 29.01.2018 is liable to be set aside. The appellant is directed to be released from the jail immediately, unless his confinement is required in any other case. This Criminal Appeal is accordingly allowed. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

PJL

To

1. The I-Additional District and Sessions Judge,
Madurai, Madurai District.
2. The Inspector of Police,
Kallikudi Police Station,
Madurai District.
3. The Superintendent, Central Prison, Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer, (2 Copies)
Criminal Section, (Records)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.PRABHU, Advocate (SR-96744[F] dated 07/11/2019)

Pre-delivery

Judgment made in

Crl.A(MD)No.51 of 2018

07.11.2019

JMN(07.11.2019) 18P : 8C