



Bail Slip

The Appellant/Accused namely 1.Suresh alias Sureshkumar 2. Raghuvaran @ Sriram, were released on bail as per order of this Court dated 05.09.2017 and made in Crl.MP(MD).No.6652 of 2017 in Crl.A(MD)No.288 of 2017.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Criminal Appeal (MD)No.288 of 2017

1.Suresh @ Sureshkumar

2.Raghuvaran @ Sriram

... Appellants/
A.1 & A.2

Vs.

State by
The Inspector of Police,
Kulithalai Police Station,
Karur District.
[Cr.No.579 of 2014]

... Respondent/
Complainant

[Crime Number has been amended as per the order of this Court made in Crl.M.P(MD)No.8534 of 2017 in Crl.A(MD)No.288 of 2017, dated 18.09.2017.]

Prayer : Appeal filed under Section 389(1) & 439 of the Code of Criminal Procedure, against the judgment and order passed in S.C.No.26 of 2016, dated 09.11.2016, by the learned Sessions Judge, Mahalir Neethi Mandram, Fast Track Mahila Court, Karur.

For Appellants Mr.M.Karunanithi
for 1st appellant/A.1

Mr.C.M.Arumugam
for 2nd appellant/A.2

For Respondent: Mr.S.Chandrasekar
Additional Public Prosecutor

* * * * *



JUDGMENT

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

The appellants are A.1 and A.2 in S.C.No.26 of 2016 on the file of the learned Sessions Judge, Fast Track Mahila Court, Karur and they stood charged and tried for the commission of the offences under Sections 364 and 302 I.P.C. The trial Court, vide impugned judgment dated 09.11.2016, has found them guilty of both the charges and convicted each of them to undergo rigorous imprisonment for life and to pay a fine of Rs.1,000/- (Rupees One Thousand only), in default, to undergo simple imprisonment for one month and the sentences of imprisonment imposed on them were ordered to run concurrently and they were also granted set off under Section 428 Cr.P.C. The appellants/A.1 and A.2 aggrieved by the conviction and sentence awarded vide impugned judgment, had filed this appeal.

2. Facts leading to the present appeal, relevant for the disposal and briefly narrated, are as follows:

2.1. P.W.1 is the younger brother of the deceased, namely, Mohan @ Navaneethakrishnan and son of P.W.3. P.W.2 is the step mother of P.W.1 and the deceased and second wife of P.W.3. The deceased Mohan @ Navaneethakrishnan had acquaintance with one Sakthi Uma who is residing opposite to the house of P.W.1 and it was not liking to the first appellant/A.1, who happened to be the cousin brother of the said girl, namely, Sakthi Uma and in this regard, used to have some altercations between the families of P.W.1 and the deceased also.

2.2. On 14.12.2014 at about 03.00 p.m., P.W.1 and his brother, namely, deceased Mohan @ Navaneethakrishnan were in their house and the first appellant/A.1 and the second appellant/A.2, who happened to his friend, decided to do away with the life of the deceased Mohan @ Navaneethakrishnan and therefore, on that day, they asked the deceased Mohan @ Navaneethakrishnan to accompany them for celebrating the birthday of the first appellant/A.1 and took him in a two wheeler bearing Registration No.TN-47-Z-5934 (M.O.1). P.W.1 thought that since the first appellant/A.1 was inimical with his brother and suspecting that something is going to happen to his brother, followed them in a sports bicycle. The deceased Mohan @ Navaneethakrishnan was taken to a plantain grove of one Thangavel, wherein he was repeatedly assaulted by the appellants/A.1 and A.2 by using M.O.2 - aruval and it was witnessed by P.W.1 and when he raised alarm, the appellants/A.1 and A.2 started chasing and therefore, he rushed back to his home in the bicycle and informed the same to his father and P.W.2 and thereafter, P.W.1 and his father - P.W.3 proceeded to Kulithalai Police Station and lodged a complaint under Ex.P.1, based on which, P.W.14 - Sub Inspector of Police attached to Kulithalai Police Station, registered a case in Cr.No.579 of 2014 under Sections 302 and 506(ii) I.P.C., at about 16.30 hours on 14.12.2014 and the printed F.I.R., was marked as



Ex.P.13. P.W.14 despatched the original of Ex.P.1 - complaint and Ex.P.13 - F.I.R., through P.W.12 - Head Constable to the jurisdictional Magistrate Court and forwarded the copies to her official superiors.

2.3. P.W.16, upon receipt of the copy of the F.I.R, proceeded to the scene of crime on the same day, i.e., on 14.12.2014 and reached the spot at 05.15 p.m., and in the presence of P.W.5 and one Chinnaian, prepared Ex.P.2 - Observation Mahazar and Ex.P.14 - Rough Sketch and from the scene of crime, recovered M.O.3 to M.O.6 under a cover of mahazar marked as Ex.P.3. P.W.16 continued with the investigation and in the spot, where the body was found, he conducted the inquest in the presence of Panchayatdars between 06.50 p.m., and 08.30 p.m., and the inquest report was marked as Ex.P.15 and at that time, P.W.4 and P.W.5 were present. P.W.16 for the purpose of finding out the cause of death, has entrusted the dead body of the deceased to P.W.13 along with Ex.P.21 - requisition for conducting the post-mortem on the body of the deceased.

2.4. P.W.17 received the body of the deceased on 10.05 a.m., on 15.12.2014 and commenced the post-mortem at about 10.35 a.m., on 15.12.2014 and during the course of the post-mortem, noted the following features:

"Identification and caste mark:

- 1) A Black mole over forehead.
- 2) A scar over right knee joint.

The body was first seen by the undersigned 10.35 am on 15.12.2014, its condition then was Rigor mortis present in all 4 limbs. Post-mortem commenced at 10.35 am on 15.12.14.

Appearances found at the Post-mortem:

A body of male moderately nourished lying on its back eyes closed mouth closed. Rigor mortis present in all 4 limbs.

External Injuries:

1) A deep cut injury (NC) right, left sided neck leaving about 3-4 (NC) neck around 18 x 7 x bone depth cut injury all port neck muscle, vessels, both carotid vessels left right sided jugular veins, both side sternomastoid muscle right edge of wound 2 cm above middle clavicle and left edge also. Right and left edge 2 cm below the middle of lower jaw.

2) A cut injury from left maxilla 5 x 3 x 2 extending left sided neck wound hyoid intact.

3) A lacerated (cut) wound 2 x 2 x 2 cm right base of thumb.

4) Cut wound 3 x 2 x 2 right palm.

5) Cut wound 2 x 2 x 2 cm over left dorsum of hand.

Internal Examination: Chest cavity:

Lungs pale, Heart pale, right ventricle



contains clots, left ventricle empty.

Abdomen Cavity:

Stomach pale, 300 ml of partially digested food particles seen. Liver, small bowel blotted, pale Kidney pale. Bladder - empty.

Skull Intact:

Brain, meninges pale intact. 1) Stomach contents. 2) Small bowel its contents. 3) Liver. 4) Kidney sent for chemical analysis."

[extracted as such]

After completion of the post-mortem, P.W.17 opined, "*The deceased would appear to have died of deep neck injury (cut) involving carotid, jugular vessels and shock and haemorrhage 20 - 22 hours prior to autopsy.*"

2.5. The body was handed over to P.W.3 and from the body, the clothes worn by the deceased were recovered under a special report, marked as Ex.P.12 and it was forwarded to the jurisdictional Magistrate Court under Form 95 marked as Ex.P.16. P.W.16 continued with the investigation and at about 11.00 a.m., on 15.12.2014 effected the arrest of the accused in the presence of P.W.10 - Village Administrative Officer and both of them voluntarily came forward to give confession statements and the admissible portions of their confession statements are marked as Exs.P.8 and P.9 respectively, which led to the recovery of M.O.1 - two wheeler, M.O.2 - aruval and the clothes worn by the appellants/A.1 and A.2 and all the material objects were recovered under a cover of mahazar marked as Exs.P.4 to P.7. P.W.16 has also recorded the further statements of witnesses and to find out whether the deceased died on account of poisoning, has sent the internal parts of the body for chemical analysis and as per Ex.P.11 - Viscera Report, no poisonous substances were noted and the scientific evidence was also collected under Ex.P.24 - Biological Report stating that M.O.3, M.O.9, M.O.11 to M.O.14 were tainted with blood and under Ex.P.25 - Serological Report, stating that blood stains found in M.O.11 and M.O.12 were human blood and the reports in that regard were collected by P.W.16 and marked as Exs.P.24 to P.26.

2.6. P.W.18 continued with the investigation and he examined the Scientific Assistant as well as Head Clerk of Court of Judicial Magistrate No.II, Kulithalai and recorded their statements and altered the case to Sections 364 and 302 I.P.C., and the alteration report was marked as Ex.P.23. P.W.18 after completion of the investigation, has filed the final report/charge sheet charging both the accused under Sections 364 and 302 I.P.C.

2.7. The Court of Judicial Magistrate No.II, Kulithalai, took it on file in P.R.C.No.18 of 2015 and the Committal Court, upon filing of the final report, issued summons to the appellants/A.1 and A.2 and on their appearance, furnished to them the documents under Section 207 of the Code of Criminal Procedure, 1973. The Committal Court having found that the case is exclusively triable by the Court of Session, committed the case to the Principal District and



Sessions Court, Karur, which in turn, made over the case to the file of the learned Sessions Judge, Fast Track Mahila Court, Karur and the said Court took it on file in S.C.No.26 of 2016 and on appearance of the accused, framed the charges under Sections 364 and 302 I.P.C., and questioned them. The appellants/A.1 and A.2 pleaded not guilty to the charges framed against them and prayed for trial of the case.

2.8. The prosecution in order to sustain their case, examined P.W.1 to P.W.19, marked Exs.P.1 to P.26 and also marked M.O.1 to M.O.14.

2.9. Both the appellants/A.1 and A.2 were questioned under Section 313(1)(b) of the Code of Criminal Procedure, 1973, with regard to the incriminating circumstances made out against them in the evidence tendered by the prosecution and they denied it as false.

2.10. On behalf of the accused, no oral evidence was let in, however, Exs.D.1 to D.3 were marked.

2.11. The trial Court on consideration of the oral and documentary evidence and other materials, found them guilty under Sections 364 and 302 I.P.C., and convicted and sentenced the appellants/A.1 and A.2 as stated above and challenging the legality of the conviction and sentence awarded vide impugned judgment, the appellants/A.1 and A.2 have preferred this Criminal Appeal.

3. Mr.M.Karunanithi, learned Counsel for the first appellant/A.1 and Mr.C.M.Arumugam, learned Counsel for the second appellant/A.2 made the following submissions:

3.1. The motive for the commission of the offence has not at all been proved by the prosecution. P.W.1 would not have been the eyewitness at all. P.W.6 who said to have seen the deceased in the company of the accused, cannot be cited as a witness as per the last seen theory for the reason that he made vital improvements during the course of his testimony. The arrest and recovery are also doubtful. The services of P.W.10 - Village Administrative Officer have been utilised despite the fact that the arrest was effected in a public place wherein very many independent witnesses were available. P.W.1 also made vital improvements and contradictions during his oral evidence from that of the one recorded under Section 161(3) Cr.P.C. The F.I.R., has been belatedly despatched to the jurisdictional Magistrate Court, for which, no explanation has been offered by the prosecution and taking advantage of the time gap, Ex.P.1 - complaint came to be lodged as if P.W.1 had witnessed the occurrence.

3.2. The respective learned Counsel for the appellants/A.1 and A.2 have invited the attention of this Court to the testimonies of the prosecution witnesses as well as exhibits and would submit that there are very many gapping holes in the prosecution case and it also bristles with very many infirmities and therefore, the trial Court, at least, ought to have awarded the benefit of doubt and acquitted both of them and prays for setting aside the judgment of



the trial Court and for acquittal of both the appellants/A.1 and A.2.

4. Per contra, Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing for the State would submit that the motive for the commission of the offence has been spoken to by P.W.1 to P.W.3, P.W.9 and P.W.15 and the testimony of P.W.1 is in consonance with the complaint marked as Ex.P.1 and suspecting that despite enmity, the appellants/A.1 and A.2 took his brother, namely, deceased Mohan @ Navaneethakrishnan for celebrating the birthday party, he immediately followed in a sports bicycle and actually witnessed the commission of the offence and when he raised alarm, he was chased and therefore, rushed back to his house and informed to his father and thereafter, the complaint came to be lodged, which led to the commencement of the investigation.

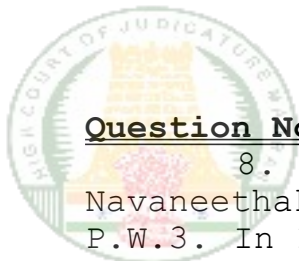
5. It is the further submission of the learned Additional Public Prosecutor appearing for the State that P.W.6 has clearly spoken about the seeing of the deceased in the company of the accused just prior to the commission of the offence and he is an independent witness and has no axe to grind against the accused and deposed in favour of the prosecution and that apart, the arrest of the appellants/A.1 and A.2 and the recovery of the lethal weapons and blood stained clothes effected were as per the admissible portions of the confession statements of the appellants/ A.1 and A.2 and the chemical analysis of the said articles would also disclose that some of the articles were tainted with human blood. In sum and substance, it is the submission of the learned Additional Public Prosecutor appearing for the State that the trial Court, on a thorough consideration and correct appreciation of oral and documentary evidence and other materials, has rightly reached the conclusion to convict and sentence both the accused accordingly and hence, prays for the dismissal of this appeal.

6. This Court has carefully considered the arguments advanced by the respective learned Counsel for the appellants/A.1 and A.2 and the learned Additional Public Prosecutor appearing for the State and also perused the materials available on record and analysed the oral and documentary evidence and other materials and also gone through the original records.

7. The questions that arise for consideration, are:

(i) Whether the prosecution through the testimonies of witnesses, exhibits and material objects marked, is able to prove it's case beyond reasonable doubt?

(ii) Whether the reasons assigned by the trial Court in the impugned judgment for convicting and sentencing the appellants/A.1 and A.2 are sustainable?

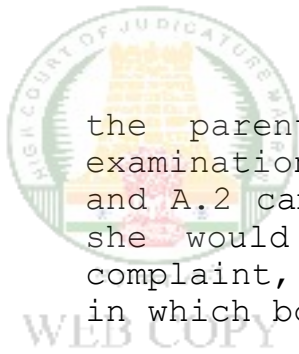


Question No.(i):

8. P.W.1 is the younger brother of the deceased Mohan @ Navaneethakrishnan and step son of P.W.2 and biological son of P.W.3. In Ex.P.1 - complaint, he has spoken about the motive aspect and as to the witnessing the occurrence and having found that both the accused were inimical to his brother and however, curiously took him out for the purpose of celebrating the birthday party, followed them while they were proceeding in a two wheeler and the deceased was taken to a plantain grove where he was done to death and it was actually witnessed by him and when he raised an alarm, both the accused started chasing him and rushed back to his home in the bicycle and informed P.W.3 and thereafter, he and his father - P.W.3 proceeded to the Police Station and lodged a complaint.

9. P.W.1 in the chief examination deposed more or less in tune with the contents of Ex.P.1 - complaint. P.W.1 in his cross-examination, would state that he did not know about the owner of the plantain grove in which murder was committed and he did not give any identification as to the brand of the two wheeler in which the appellants/A.1 and A.2 took his brother on the fateful day. The attention of P.W.1 was also drawn to Exs.D.1 to D.4 as to the telecast of interview given by P.W.2 and P.W.3 as to the murder of the deceased Mohan @ Navaneethakrishnan. A specific question was put to P.W.1 as to why he did not administer warning to his brother not to go with the appellants/A.1 and A.2 and the answer was given by him stating that he followed them after five minutes and as such, he could not administer warning. P.W.1 further stated that the complaint was marked as Ex.P.1, however, it was dictated and somebody wrote and he signed it. P.W.1 would further state that after seeing the occurrence, he returned back to the home in the bicycle and would further depose that he did not accompany the police to the scene of crime and in fact, he did not go to the scene of crime at all, however, he became aware of the fact that body was found in the plantain grove. P.W.1 would further depose that he did not know as to the chain and cell phone possessed by him and also stated before the police as to the frequent telephone conversations between the deceased and Sakthi Uma. In the cross-examination of P.W.1, some contradictions were elicited on behalf of the appellants/A.1 and A.2.

10. P.W.2 is the step mother of the deceased as well as P.W.1. In the chief examination, she had stated that both the accused, at about 03.00 p.m., on 14.12.2014 asked the deceased to accompany them for the purpose of hosting a party and suspecting their motive, P.W.1 followed them. P.W.2 in the cross-examination deposed that she is not directly aware of the affair of the deceased with Sakthi Uma, but came to know the same subsequently and till the previous day, i.e., on 13.12.2014, she was having normal conversation with the mother of Sakthi Uma and even in the visual media interview (Exs.D.1 to D.4), she did not say anything against



the parents of Sakthi Uma. P.W.2 would admit in the cross-examination that she did not say the police that the appellants/A.1 and A.2 came to her house and took the deceased in a motorcycle and she would further depose that for the purpose of lodging the complaint, she has accompanied P.W.1 and P.W.3 and also to the place in which body was found.

11. P.W.3 is the father of P.W.1 and the deceased and husband of P.W.2 and in the chief examination, he would state that with regard to the affair of his son with Sakthi Uma, her mother - Latha has created some problem and also castigated her daughter and he also scolded his wife as to the taking of his son by the appellants/A.1 and A.2. P.W.3 in the cross-examination would state that he became aware of the affairs of Sakthi Uma and his son only through P.W.2 and he would further depose that in the place in which body was found, it was covered with dry plantain leaves with sprinkling of chilly powder nearby and he proceeded to the police station between 04.30 p.m., and 05.00 p.m., on 14.12.2014 along with P.W.1.

12. P.W.6 was examined by the prosecution to speak about the last seen theory. He along with one Arul were proceeding in a two wheeler and Arul asked him to ride the two wheeler slowly and he saw the appellants/A.1 and A.2 and the deceased travelling in their motorcycle and when Arul asked A.1 as to where they are taking the deceased, A.1 told him that for the purpose of celebrating a party, they took the deceased and at about 04.30 p.m., he became aware of the demise of the deceased and he immediately informed Arul and subsequently, went to the plantain grove and saw the body. P.W.6, in the cross-examination, would depose that he did not disclose the brand name and Registration Number of the two wheeler in which the appellants/A.1 and A.2 took the deceased and he was not aware of the family details of the accused and he was not at all aware of the accused even prior or after the said incident.

13. P.W.7 was said to have seen A.1 wearing blood stained clothes and in his cross-examination, some contradictions were elicited and before the police, he did not state as to the spot in which he saw A.1 with blood stained clothes.

14. P.W.8 also deposed on the similar line of P.W.7 and in the cross-examination, he did not say about the purpose for which he stood near Kulithalai Toll Gate. Here again, some contradictions were elicited in his cross-examination.

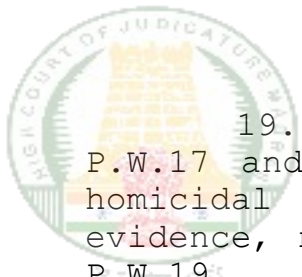
15. P.W.10 - Village Administrative Officer has spoken about the arrest of the appellants/A.1 and A.2 and recovery of incriminating articles pursuant to the admissible portions of their confession statements.



16. P.W.14 was the Sub Inspector of Police attached to Kulithalai Police Station at the relevant point of time and she has spoken about the lodging of the complaint - Ex.P.1 and registration of F.I.R. In the cross-examination, she would depose that Kulithalai Police Station is located just opposite to the Court of Judicial Magistrate No.II, Kulithalai and the Court can be reached within two minutes and immediately after the preparation of F.I.R., she handed over the same to P.W.12 - Head Constable attached to Kulithalai Police Station for submitting the same to the Judicial Magistrate and she would further depose that when P.W.1 reached the police station, he was in possession of the written complaint. P.W.14 in the cross-examination further deposed that the F.I.R., would disclose that it reached the Judicial Magistrate at about 06.00 a.m., on 15.12.2014 and denied the suggestion that Ex.P.1 - complaint and Ex.P.13 - F.I.R., came to be prepared as projected.

17. P.W.12 - Head Constable attached to Kulithalai Police Station took the F.I.R., prepared by P.W.14 - Sub Inspector of Police, to the jurisdictional Magistrate Court and in the cross-examination, would depose that just 10 minutes prior to the time at which, he has submitted to the jurisdictional Magistrate Court, it was handed over to him and also confirmed the fact that the F.I.R., was submitted at 06.00 a.m., on 15.12.2014.

18. P.W.16 is the 1st Investigating Officer and in the cross-examination, would depose that he did not see the chain on the body and he recorded the statements of P.W.1 and P.W.3 on the spot itself and P.W.1 did not disclose the type of clothes worn by the appellants/A.1 and A.2 and the identity of the two wheeler in which they took the deceased. A specific question was put to P.W.16 as to the belated despatch of - Ex.P.13 - F.I.R., and P.W.16 deposed that P.W.12 - Head Constable attached to Kulithalai Police Station did not say as to what time he despatched the same to the jurisdictional Magistrate Court. The contradictions elicited from the witnesses were also put to P.W.16 and he would depose that P.W.1 during the course of recording the statement, did not state that he proceeded 5 minutes after his brother was taken by the appellants/A.1 and A.2 and on the spot, did not say that A.2 pulled his brother to death and also not spoken about the proceeding to the police station along with his father - P.W.3. P.W.16 further deposed that P.W.4 in the statement recorded during investigation did not say that he was informed by P.W.3 as to the murder of his son. It is further deposed by P.W.16 that when his attention was drawn to the contradictions elicited from the testimony of P.W.6 - witness to last seen theory, P.W.6 did not say that Arul asked him to drive the two wheeler slowly and similarly, P.W.7 did not say during the course of investigation as to the brand name of the two wheeler in which the deceased was taken by the appellants/A.1 and A.2 and denied the suggestion that the entire case has been foisted and concocted.



19. The Doctor who conducted the post-mortem was examined as P.W.17 and he would depose that the deceased died on account of homicidal violence and the witnesses to the other scientific evidence, namely, Exs.P.24 to P.26 were also examined as P.W.11 to P.W.19.

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20. The appellants/A.1 and A.2 in their questioning under Section 313(i)(b) Cr.P.C., had totally denied the incriminating circumstances and they also filed Exs.D.1 to D.4 as to the visual media interview to show that at that point of time, the identity of the accused has not been fixed.

21. On consideration of the oral and documentary evidence and other materials available on record and on appreciation of the submissions made by the learned Counsel for the appellants/A.1 and A.2 and the learned Additional Public Prosecutor appearing for the State, this Court is of the considered view that the prosecution has failed to prove the guilt on the part of both the appellants/A.1 and A.2 beyond reasonable doubt for the following reasons.

22. The prosecution has projected the case on the basis of eyewitness of P.W.1 and it is a settled position of law that if it is the case of eyewitness account, the motive would be insignificance. However, one of the moot points, is whether the prosecution has proved the motive aspect?

23. It is the specific case of the prosecution that the deceased who is the elder brother of P.W.1 had developed acquaintance with one Sakthi Uma, daughter of Dharman and Latha and it was not to the liking of her cousin, namely, A.1 and there appears to be frequent altercations. The prosecution did not examine the parents of Sakthi Uma, who are the best persons to talk about the motive and there may be justification for the reason that she was a school going girl, aged about 15 years. To corroborate the testimony of P.W.1 as to the motive aspect, the prosecution has examined P.W.2, P.W.9 and P.W.15.

24. P.W.2 would state that she was initially not aware of the said relationship and later on, she came to know about the same and P.W.3 - her husband and father of the deceased, would become aware of the said fact only through P.W.2. It is also the categorical testimony of P.W.2 that just prior to the date of occurrence, i.e., on 13.12.2014, she was having normal conversation with the mother of Sakthi Uma and even in the visual media interview, she did not say anything against the parents of Sakthi Uma.

25. It is also to be noted at this juncture that A.1 is not the blood relative of Sakthi Uma nor the person supposed to have married Sakthi Uma and he happened to be the cousin as per the version of the prosecution. P.W.9 would state that with regard to the affair between Sakthi Uma and the deceased, P.W.2 told him,



whereas the testimony of P.W.2 is otherwise. P.W.15 who was supposed to speak about the F.I.R., turned hostile.

26. In the light of the inconsistencies between the testimony of P.W.1 on the one side and the testimonies of P.W.2, P.W.3 and P.W.8 on the other side, the corroborating material or evidence is absent as to the motive aspect on the part of the appellants/A.1 and A.2 to do away with the life of the deceased. A.2 has been projected as a friend of A.1 and absolutely, there are no materials placed as to why he has also participated in the commission of the crime.

27. The prosecution has projected P.W.1 as an eyewitness to the occurrence and according to him, having suspected that the appellants/A.1 and A.2, who are inimical against his brother, invited him for a birthday party, followed them in a sports bicycle. A specific question was put to him that having become aware of the enmity, why he has not warned his brother and it was replied by P.W.1 that he followed them after 5 minutes.

28. It is to be noted at this juncture that A.1 and A.2 took the deceased in TVS Sports two wheeler and 5 minutes thereafter, P.W.1 followed them in a sports bicycle. P.W.6 who supposed to speak about the last seen theory, in the considered opinion of this Court, has made very many improvements from that of his statements recorded during investigation and it has also been successfully elicited through the cross-examination of P.W.16 - Investigating Officer.

29. P.W.1 would further depose that A.1 and A.2 took the deceased to a plantain grove where he was repeatedly attacked with M.O.2 - aruval by A.1 and A.2 and immediately, he raised an alarm and on seeing that, they chased him and therefore, he rushed back to home in his bicycle.

30. In the considered opinion of this Court, a contradiction was successfully elicited wherein P.W.1 would depose that he did not return by his bicycle and rushed to home and informed P.W.2 and P.W.3. It is to be noted at this juncture that when P.W.16 - Investigating Officer proceeded to the spot, the bicycle was not available and a contradiction was also elicited that P.W.1 during the course of investigation, did not state that he followed A.1 and A.2, 5 minutes thereafter.

31. P.W.16 - Investigating Officer would depose that P.W.1 during the course of investigation, did not specifically state about the place in which attack was made by A.1 and A.2 on his brother. In the light of the said material contradictions, this Court is of the considered view that it is not safe to rely upon the testimony of P.W.1 who is projected as a sole eyewitness by the prosecution and it is also strengthened by the following facts also.



32. P.W.14 - Sub Inspector of Police has registered the F.I.R., at about 04.30 p.m., on 14.12.2014 and according to her, immediately it was despatched through P.W.12 - Head Constable attached to Kulithalai Police Station. P.W.14 in the cross-examination, which has been extracted in earlier paragraphs, would admit that the jurisdictional Magistrate Court is located just opposite to Kulithalai Police Station and within two minutes from the police station, they can reach the jurisdictional Magistrate Court and after the registration of the F.I.R., within 10 minutes, she handed over the same to P.W.12 - Head Constable for the purpose of submitting the same to the jurisdictional Magistrate Court.

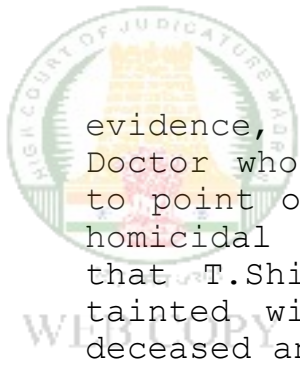
33. P.W.12 - Head Constable attached to Kulithalai Police Station has admitted the location of the jurisdictional Magistrate Court and in the cross-examination, would depose that within 10 minutes of handing over of the F.I.R., he has submitted the same to the jurisdictional Magistrate Court at about 06.00 a.m., on 15.12.2014. It is to be noted at this juncture that the F.I.R., was registered at about 04.30 p.m., on 14.12.2014 and whereas the original of Ex.P.1 - complaint and the original of Ex.P.13 - F.I.R., were submitted to the Court of Judicial Magistrate No.II, Kulithalai, at about 06.00 a.m., on 15.12.2014 and thereby, resulting in the delay of 13 ½ hours.

34. It is the settled position of law that it is not as if every delay would be fatal to the prosecution case, but, in case of delay, if the prosecution is unable to come out with any plausible or reasonable explanation, the said delay is fatal.

35. P.W.14 - Sub Inspector of Police, who registered the F.I.R., and P.W.12 - Head Constable attached to Kulithalai Police Station, who submitted the same to the jurisdictional Magistrate Court, were specifically questioned and they were unable to offer any acceptable or plausible explanation and similarly, P.W.16 - Investigating Officer has also failed to offer any explanation at all as to the belated despatch of F.I.R., to the jurisdictional Magistrate Court.

36. The primordial submission made by the learned Counsel for the appellants/A.1 and A.2 is that taking advantage of the said delay, the accused were roped in and further pointed out that even as per the testimony of P.W.3, when he saw the body, it was covered with dry plantain leaves with sprinkling of chilly powder nearby and neither the cell phone possessed by the deceased nor the chain worn by him was recovered.

37. P.W.16 - Investigating Officer would also admit that he did not investigate on the mobile phone conversations that took place between the deceased and Sakthi Uma. No doubt, the scientific



evidence, namely, post-mortem report, has been spoken to by the Doctor who conducted autopsy, namely, P.W.17. It is also pertinent to point out at this juncture that the deceased died on account of homicidal violence and Ex.P.25 - biological report would indicate that T.Shirt and Banian worn by the deceased were found to be tainted with human blood and so also, the clothes worn by the deceased and the finding was disintegrated.

Question No. (ii):

38. In the considered opinion of this Court, there are very many gaps and holes in the case projected by the prosecution and in the light of the infirmities and inconsistencies, the main edifice of the prosecution case has fallen down. The trial Court, in the considered opinion of this Court, has not appreciated the oral and documentary evidence in proper perspective and therefore, the benefit of doubt shall inure in favour of the appellants/A.1 and A.2 and as a consequence, they are entitled for acquittal.

39. In the result, this Criminal Appeal is allowed and the conviction and sentence awarded by the learned Sessions Judge, Fast Track Mahila Court, Karur, vide impugned judgment made in S.C.No.26 of 2016, dated 09.11.2016, are set aside and both the appellants/A.1 and A.2 are acquitted of the charges framed against them. It is represented that the appellants have already been granted suspension of substantive sentence of imprisonment and hence, the bail bonds executed by them shall stand terminated. Fine amounts, if any paid, shall be refunded to them.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

rsb

To

- 1.The Sessions Court,
Mahalir Neethi Mandram,
Fast Track Mahila Court,
Karur.
- 2.The Judicial Magistrate No.II,
Kulithalai,
Karur District.
- 3.The Chief Judicial Magistrate,
Karur District.

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



4.The Superintendent, Central Prison,
Tiruchirappalli.

5.The Inspector of Police,
Kulithalai Police Station, Karur District.

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

Copy to: The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.M.KARUNANITHI, Advocate SR-78622.

+1 CC to Mr.C.M.ARUMUGAM, Advocate SR-78686.

Criminal Appeal (MD)No.288 of 2017

26.07.2019

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