



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.09.2019

DELIVERED ON : 24.09.2019

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

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Criminal Appeal (MD)Nos.458, 459 and 464 of 2017

and

Crl.M.P(MD)Nos.10388, 10403 and 10573 of 2017

Crl.A(MD)No.458 of 2017:

M.Subramani

... Appellant/A.2

Vs.

The State through,
The Inspector of Police,
Avaniyapuram Police Station,
Madurai District.
[Cr.No.490 of 2012]

... Respondent/
Complainant

Prayer : Appeal filed under Section 374 of the Code of Criminal Procedure, against the judgment passed in S.C.No.103 of 2015, dated 15.09.2017, by the learned IV Additional District and Sessions Judge, Madurai.

For Appellant

: Mr.T.Lajapathi Roy

For Respondent

: Mr.M.Chandrasekaran
Additional Public Prosecutor

Crl.A(MD)No.459 of 2017:

M.Sankar

... Appellant/A.3

Vs.

The State through,
The Inspector of Police,
Avaniyapuram Police Station,
Madurai District.
[Cr.No.490 of 2012]

... Respondent/
Complainant

Prayer : Appeal filed under Section 374 of the Code of Criminal Procedure, against the judgment passed in S.C.No.103 of 2015, dated 15.09.2017, by the learned IV Additional District and Sessions Judge, Madurai.



For Appellant : Mr.T.Lajapathi Roy
For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor

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Crl.A(MD)No.464 of 2017:

R.Balamurugan ... Appellant/A.1

Vs.

The State through,
The Inspector of Police,
Avaniyapuram Police Station,
Madurai District.
[Cr.No.490 of 2012]

... Respondent/
Complainant

Prayer : Appeal filed under Section 374 of the Code of Criminal Procedure, against the judgment passed in S.C.No.103 of 2015, dated 15.09.2017, by the learned IV Additional District and Sessions Judge, Madurai.

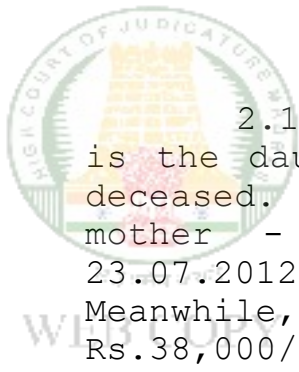
For Appellant : Mr.T.Lajapathi Roy
For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor

* * * * *

COMMON JUDGMENT

Accused Nos.1 to 3 in S.C.No.103 of 2015 on the file of the IV Additional District and Sessions Judge, Madurai, are the appellants in these appeals. They stood charged and tried for the commission of the offences under Sections 341 and 302 read with Section 34 I.P.C. and vide impugned judgment dated 15.09.2017, they were found guilty for the commission of the offence under Section 302 read with Section 34 I.P.C. and were convicted to undergo rigorous imprisonment for life and to pay a fine of Rs.2,000/- (Rupees Two Thousand only) each, in default, to undergo simple imprisonment for three months. However, they were not found guilty of the charge framed under Section 341 I.P.C. and were acquitted under Section 235(i) Cr.P.C. The appellants herein/A.1 to A.3 aggrieved by the conviction and sentence awarded vide impugned judgment, have filed the present Criminal Appeals.

2. Facts leading to the filing of the present appeals, briefly narrated and necessary for the disposal of these appeals, are as follows:

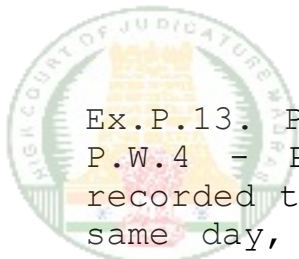


2.1. P.W.1 is the son of the deceased Gurusamy Konar. P.W.2 is the daughter of the deceased. P.W.4 is the son-in-law of the deceased. P.W.1, his father - deceased Gurusamy Konar and his mother - Muthu Irulayee were residing at Mettupunjai. On 23.07.2012, his mother went to see her daughter - P.W.2. Meanwhile, on coming to know about the theft of a sum of Rs.38,000/- (Rupees Thirty Eight Thousand only) and a DVD Player, P.W.2 and her husband - P.W.4 came to the house of the deceased Gurusamy Konar and on enquiry with the deceased, he told that he had a suspicion over his tenant, namely, A.1 - Balamurugan and his friends, A.2 - Subramani and A.3 - Sankar and hence, he lodged a complaint before Avaniapuram Police Station against them. Being enraged by the act of the deceased in lodging the complaint against them, the appellants/A.1 to A.3 picked up a quarrel with the deceased in front of Priya Tea Stall on 23.07.2012 at about 09.30 p.m., and threatened him with dire consequences.

2.2. On 24.07.2012, at about 12.15 a.m., the deceased Gurusamy Konar was sleeping on the corridor of his house and at that time, P.W.1 heard the alarm raised by his father and immediately, he along with P.W.2 and P.W.4 came out and saw the appellants/A.1 to A.3 assaulting armed with deadly weapons uttering the words "Are you giving a false complaint against us?" and the first accused assaulted the deceased Gurusamy Konar with aruval on his head, neck and left hand indiscriminately and the second accused assaulted him with aruval on his head, left cheek, neck and stomach and the third accused stabbed the deceased Gurusamy Konar on his neck, stomach and chest and when P.W.1 questioned them as to why they assaulted his father, they fled away and the deceased was lying in a pool of blood and he died on the spot. Thereafter, he along with P.W.4 went to Avaniyapuram Police Station and lodged the complaint marked as Ex.P.1.

2.3. P.W.16 - Sub Inspector of Police, on receipt of Ex.P.1 - complaint, registered the F.I.R. in Cr.No.490 of 2012 at about 03.00 a.m., on 24.07.2012 for the commission of the offences under Sections 341 and 302 I.P.C. The printed F.I.R., was marked as Ex.P.11. P.W.16 despatched the original of Ex.P.1 - complaint and Ex.P.11 - F.I.R., to the jurisdictional Magistrate Court and sent the copies to the official superiors.

2.4. P.W.17 - Inspector of Police, on receipt of the F.I.R., commenced the investigation and at about 06.30 a.m., on 24.07.2012 went to the scene of crime and in the presence of P.W.10 and one Nagaraj, prepared the Observation Mahazar - Ex.P.7 and Rough Sketch - Ex.P.12. P.W.17 recovered M.O.4 - blood stained earth and M.O.5 - sample earth under a cover of mahazar marked as Ex.P.8. P.W.17 in the presence of Panchayatdars had conducted inquest at about 10.30 a.m., and the inquest report was marked as



Ex.P.13. P.W.17 had examined P.W.1 - Marimuthu, P.W.2 - Shanthi, P.W.4 - Periyasamy, P.W.3 - Sonaimuthu and one Muthusamy and recorded their statements under Section 161(3) Cr.P.C. On the very same day, P.W.17 had examined the wife of the deceased - Muthu Irulayee.

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2.5. P.W.17 sent the body of the deceased Gurusamy Konar through P.W.11 - Gr.I. Police Constable for conducting the post-mortem. P.W.14 was the Professor and Head of the Department of Forensic Medicine, District Police Surgeon, Madurai Medical College and commenced the post-mortem at about 01.15 p.m., on 24.07.2012 and noted the following features:

"Appearances found at the postmortem:

Moderately nourished body of a male, aged about 57 years. Finger & Toe nails are pale.

The following ante mortem injuries are noted on the body:

1. An Oblique stab injury 3 cm x 1 cm x bone deep noted over the right side of front of middle of neck.

On dissection: The wound passes obliquely downwards and backwards piercing, the underlying muscles, vessels, nerves, piercing the wind pipe through and through, and entering into food pipe.

2. An Oblique cut injury 6 cm x 1 cm x muscle deep noted on left side of neck. 10 cm below the ear lobe.

On dissection: The wound found cutting the underlying muscles, vessels (cerotid vessels), and nerves.

3. An Oblique cut injury 4 cm x 1 cm x muscle deep noted on right side middle of neck.

On dissection: The wound found cutting the underlying muscles, vessels and nerves.

4. An Oblique stab injury 5 cm x 1 cm x peritoneal cavity deep noted on upper part of abdomen, 12 cm above the umbilicus.

On dissection: The wound passes obliquely downwards and backward piercing the underlying muscles, vessels, nerves and entering into peritoneal cavity. Peritoneal cavity contains 200 ml of fluid-blood with clots.

5. An Oblique cut injury 6 cm x 1 cm x muscle deep noted on back of lower part of neck.

6. An Oblique cut injury 7 cm x 1 cm x muscle deep noted on back of lower part of neck, 2 cm below the injury No.5.

7. An Oblique cut injury 10 cm x 1 cm x bone deep



noted on the inner aspect of left wrist.

8. An Oblique cut injury 1 cm x 1 cm x bone deep noted on the palmer aspect of left thumb.

9. An Oblique cut injury 7 cm x 1 cm x muscle deep noted on left cheek.

10. Laceration 10 cm x 1 cm x bone deep noted on left parietal region.

11. Contusion 3 cm x 2 cm noted on back of left shoulder.

Note:

1. All the cutting injuries are having regular margins.

2. All the stab injuries are having margins. One end is pointed and other end is curved."

[extracted as such]

2.6. P.W.14, after concluding the post-mortem, has opined, "The deceased would appear to have died of shock and haemorrhage due to external injuries No:01 to 04 and its corresponding internal injuries, 12 - 16 hours prior to autopsy." and accordingly, issued the post-mortem certificate marked as Ex.P.9.

2.7. During the course of investigation, P.W.17 came to know that on 22.07.2012, a sum of Rs.38,000/- (Rupees Thirty Eight Thousand only) and a DVD Player were stolen from the house of the deceased Gurusamy Konar and having a suspicion over the appellants/A.1 to A.3, the deceased Gurusamy Konar lodged a complaint against them and the same was registered in C.S.R.No.494/2012 by the Special Sub Inspector of Avaniyapuram Police Station and being enraged by the act of the deceased Gurusamy Konar, the appellants/A.1 to A.3 murdered him.

2.8. On 26.07.2012 at about 06.30 a.m., P.W.17 effected the arrest of the appellants/A.1 to A.3 and they voluntarily gave confession statements in the presence of P.W.4 and one Lakshmanan and as per the admissible portion of the confession statement of A.1, marked as Ex.P.2, M.O.1 - aruval, M.O.2 - aruval and M.O.3 - Knife, were recovered and they were sent to the jurisdictional Magistrate Court under Form 95 and thereafter, sent requisition for conducting biological and serological examination and the biological report, serology report and chemical analysis report were marked as Exs.P.4 to P.6 respectively.

2.9. On 26.07.2012, P.W.17 examined P.W.4, Lakshmanan, P.W.5 and Kalidoss and recorded their statements. On 25.08.2012, P.W.17 also examined P.W.15 - Dr.Vanitha, Government Rajaji Hospital, Madurai, P.W.12 - Dhapandi, Gr.I. Police Constable, P.W.11 - Deepan Chakravarthy, Gr.I. Police Constable, P.W.13 - Shanmuganathan, Sub Inspector of Police and recorded their



statements. On the same day, P.W.17 examined P.W.16 - Sathiya Sheela, Sub Inspector of Police and recorded her statement. On 26.11.2012, P.W.17 examined Dr.Natarajan, who conducted the post-mortem on the body of the deceased and also examined Baskaran, P.W.8 - Beermohaideen, and P.W.1 - Marimuthu and recorded their statements. On receipt of the reports from the Forensic Department, on 29.12.2012, P.W.17 examined Parvathi - Head Clerk, P.W.9 - Vijayendran and Rajaram. Upon completion of investigation and after obtaining the opinion from the Joint Director of Criminal Prosecution, P.W.17 went on transfer and his successor filed the final report/charge sheet before the Court of Judicial Magistrate No.6, Madurai, charging the appellants/A.1 to A.3 for the offences under Sections 341 and 302 read with 34 I.P.C. and it was taken on file in P.R.C.No.10 of 2015.

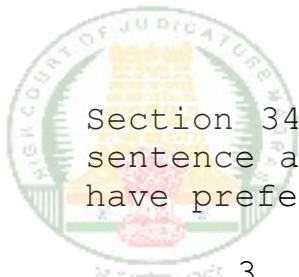
2.10. The Committal Court, upon filing of the final report, issued summons to the appellants/A.1 to A.3 and on their appearance, furnished to them the documents under Section 207 of the Code of Criminal Procedure, 1973. The Committal Court having found that the case is exclusively triable by the Court of Session, committed the case to the Principal District and Sessions Court, Madurai, which in turn, made over the case to the file of the IV Additional District and Sessions Court, Madurai, which has taken it on file in S.C.No.103 of 2015 and on appearance of the accused, framed the charges under Sections 341 and 302 read with 34 I.P.C., and questioned them. The appellants/A.1 to A.3 pleaded not guilty to the charges framed against them and prayed for trial of the case.

2.11. The prosecution in order to sustain their case, examined P.W.1 to P.W.17, marked Exs.P.1 to P.15 and also marked M.O.1 to M.O.5.

2.12. The appellants/A.1 to A.3 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.

2.13. On behalf of the appellants/A.1 to A.3, neither oral nor documentary evidence was let in.

2.14. The trial Court on consideration of the oral and documentary evidence and other materials, found them guilty under Section 302 read with Section 34 I.P.C., and convicted and sentenced the appellants/A.1 to A.3 as stated above and acquitted them of the charge framed for the offence under Section 341 I.P.C., and the State did not prefer any appeal against the acquittal of the appellants/A.1 to A.3 for the offence under



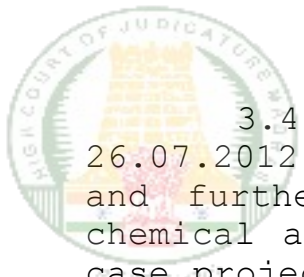
Section 341 I.P.C. Challenging the legality of the conviction and sentence awarded vide impugned judgment, the appellants/A.1 to A.3 have preferred these Criminal Appeals.

3. Mr.T.Lajapathi Roy, learned Counsel for the appellants/A.1 to A.3 made the following submissions:

3.1. It is the version of the prosecution that there was a theft in the house of the deceased Gurusamy Konar and he had suspected the involvement of the appellants/A.1 to A.3 and lodged a complaint against them and being enraged over the same, the appellants/A.1 to A.3 had picked up a quarrel with the deceased in front of Priya Tea Stall on 23.07.2012 at 09.30 p.m., and thereafter, having hatched conspiracy to do away with the life of the deceased Gurusamy Konar, the appellants/A.1 to A.3 murdered him. However, none of the witnesses had spoken about the said incident and further, the receipt given for the complaint lodged by the deceased Gurusamy Konar was not recovered and thus, it cannot be said that the appellants/A.1 to A.3 had motive against the deceased Gurusamy Konar.

3.2. Though P.W.1 immediately after the occurrence, lodged Ex.P.1 - complaint with the police, based on which, Ex.P.11 - F.I.R., came to be registered, in the complaint, the date and seal of the jurisdictional Magistrate Court would reveal that the same had been received only after two days of the occurrence and hence, it could not be believed that immediately after the occurrence, the complaint had been lodged by P.W.1. Therefore, there is a delay in reaching Ex.P.1 - complaint to the jurisdictional Magistrate Court as the same had been despatched only after two days and hence, it is highly doubtful as to the credibility of the same and it had not been properly explained by the prosecution.

3.3. P.W.1 in his chief examination had deposed that upon hearing the alarm raised by the deceased Gurusamy Konar, he along with P.W.2 and P.W.4 came out and witnessed the appellants/A.1 to A.3 assaulting the deceased with the help of the light from the lamp post. There is a civil litigation pending between P.W.1 and his father, namely, the deceased Gurusamy Konar in the civil Court with regard to a property dispute and in that event, the presence of P.W.1 is highly doubtful as to his presence in the midnight of the date of occurrence. The eyewitnesses are, admittedly, close relatives of the deceased and as such, it is not safe to rely upon the said testimonies to record conviction and sentence. The so-called independent eyewitness, namely, P.W.3 turned hostile and he did not support the version of the prosecution. Thus, the prosecution has miserably failed to prove its case beyond reasonable doubt as there are no independent witnesses examined to sustain their case.



3.4. Though the weapons of crime were recovered on 26.07.2012 in the presence of one Lakshmanan, he was not examined and further, the weapons recovered were not at all sent for chemical analysis and hence, it gives rise to suspicion over the case projected by the prosecution, and in sum and substance, it is the submission of the learned Counsel for the appellants/A.1 to A.3 that since the case of the prosecution bristles with very many inconsistencies and improbabilities, the trial Court ought to have awarded the benefit of doubt and acquitted them and therefore, prays for allowing these appeals.

4. Per contra, the learned Additional Public Prosecutor appearing for the State has drawn the attention of this Court to the testimonies of witnesses and would submit that the testimony of P.W.1 is in tune with Ex.P.1 - complaint given by him and it is amply corroborated through the evidence of P.W.2 - sister of P.W.1. On receipt of Ex.P.1 - complaint lodged by P.W.1, the F.I.R had been registered on 24.07.2012 at 03.00 a.m., and immediately thereafter, the same had been despatched to the jurisdictional Magistrate Court without any loss of time and the discrepancy pointed out with regard to the date and seal of the Magistrate Court would not in any way affect the core of the prosecution. With regard to the motive aspect, the prosecution had examined P.W.13 - Shanmuganathan, Special Sub Inspector of Police, who had spoken about the lodging of the complaint by the deceased Gurusamy Konar against the appellants/A.1 to A.3 alleging theft of a sum of Rs.38,000/- (Rupees Thirty Eight Thousand only) and a DVD Player, for which, C.S.R.No.494/2012 had been given on the file of Avaniyapuram Police Station and hence, the motive had been clearly proved by the prosecution against the appellants/A.1 to A.3 to do away with the life of the deceased Gurusamy Konar. P.W.14 - Doctor, who conducted post-mortem on the body of the deceased, had categorically opined that the deceased would appear to have died of shock and haemorrhage due to external injuries No:01 to 04 and its corresponding internal injuries 12 - 16 hours prior to autopsy and in his chief examination, the Doctor had specifically deposed that the injuries sustained by the deceased would appear to have caused by M.O.1 to M.O.3 and hence, the same has been corroborated by the medical evidence. With regard to the date and seal of the jurisdictional Magistrate Court in Ex.P.1 - complaint, it is contended that the same had been despatched to the Magistrate without any loss of time and the Magistrate received on the same day and the date and seal of the Magistrate Court had been affixed at a later point of time and hence, the contention of the learned Counsel for the appellants/A.1 to A3 is liable to be rejected. Therefore, the trial Court, on proper appreciation and consideration of entire materials available on record, has rightly reached the conclusion to convict and sentence the appellants/A.1 to A.3 in commensurate with the gravity of the offence and prays



for the dismissal of these appeals.

5. This Court has paid it's best attention and anxious consideration to the rival submissions and also perused the materials available on record.

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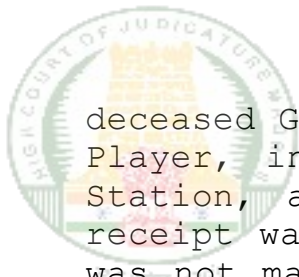
6. The questions that arise for consideration, are:

- (i) Whether the prosecution through oral and documentary evidence and other materials, had sustained its case? and
- (ii) Whether the reasons assigned in the impugned judgment are sustainable?

7. P.W.1 is the son of the deceased Gurusamy Konar and P.W.2 is the daughter of the deceased and P.W.4 is the son-in-law of the deceased. P.W.1, in his chief examination, would depose that the deceased Gurusamy Konar informed him, P.W.2, P.W.4 and P.W.3 about the theft of Rs.38,000/- (Rupees Thirty Eight Thousand only) and a DVD Player and he had a suspicion that his tenant, namely, A.1 - Balamurugan along with A.2 and A.3, would have committed the theft and lodged a complaint with Avaniyapuram Police Station against them. Being enraged by the act of the deceased Gurusamy Konar in implicating the appellants/A.1 to A.3, they picked up a quarrel with the deceased on 23.07.2012 at 09.30 p.m., in front of Priya Tea Stall. On 24.07.2012 at about 12.15 a.m., the deceased Gurusamy Konar went for sleeping and at that time, they heard the alarm raised by the deceased and they witnessed the appellants/A.1 to A.3 assaulting the deceased with deadly weapons. When he questioned them as to why they were assaulting the deceased, they fled away from the scene of occurrence and the deceased was lying in a pool of blood and he succumbed to the injuries on the spot. P.W.2 - daughter of the deceased and P.W.4 - son-in-law of the deceased also deposed on the similar lines and the evidence of P.W.1 has been corroborated by the evidence of P.W.2 and P.W.4, though P.W.3 - independent witness turned hostile.

8. It is the vehement submission of the learned Counsel for the appellants/A.1 to A.3 that though it is the case of the prosecution that the deceased Gurusamy Konar lodged a complaint against them with regard to the theft of a sum of Rs.38,000/- (Rupees Thirty Eight Thousand only) and a DVD Player and being enraged by the same, they committed the murder of the deceased, the receipt for the complaint lodged by the deceased was not marked and hence, the motive as projected by the prosecution cannot be believed at all.

9. However, P.W.13 - Shanmuganathan, Special Sub Inspector of Police, in his testimony, had clearly spoken about the said incident and also as to the receipt of the complaint given by the



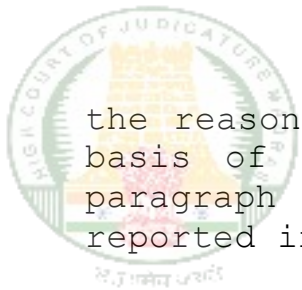
deceased Gurusamy Konar with regard to the theft of cash and a DVD Player, in C.S.R.No.494/2012 on the file of Avaniyapuram Police Station, against the appellants/A.1 to A.3. When a copy of the receipt was attempted to be marked, it was objected and hence, it was not marked as a document. The testimonies of P.W.1, P.W.2 and P.W.4 are corroborated by the evidence of P.W.13 - Special Sub Inspector of Police, in that regard.

10. It is also contended by the learned Counsel for the appellants/A.1 to A.3 that since P.W.1, P.W.2 and P.W.4 are close relatives of the deceased Gurusamy Konar, their evidence cannot be relied upon to convict and sentence the appellants/ A.1 to A.3. However, the testimony of P.W.1, appears to be natural and in consonance with his complaint, marked as Ex.P.1. Though it is the vehement submission of the learned Counsel for the appellants/A.1 to A.3 that since they are interested witnesses, in the absence of corroboration by an independent witness, the same cannot be believed, this Court is of the opinion that though P.W.3 - neighbour, turned hostile, the testimony of P.W.14 - Doctor, who conducted the autopsy, coupled with Ex.P.9 - post-mortem report, would reveal that the deceased died on account of homicidal violence pursuant to the overt act on the part of the appellants/A.1 to A.3. That apart, not all related witnesses can be branded as interested witnesses.

11. It is also pointed out by the learned Counsel for the appellants/A.1 to A.3 that though the recovery has been effected in the scene of crime as per Exs.P.3 and P.8 - recovery mahazars, P.W.17 had not sent M.O.1 to M.O.3 - aruvals and knife, for chemical analysis and hence, it cannot be stated that they were tainted with human blood.

12. Admittedly, M.O.1 to M.O.3 - aruvals and knife, were recovered under a cover of mahazar marked as Ex.P.3 pursuant to the admissible portion of the confession statement given by A.1 and according to the testimony of P.W.17, immediately after the recovery, he sent the recovered weapons to the jurisdictional Magistrate Court for custody and P.W.1, P.W.2 and P.W.4 identified the same in the Court. Moreover, P.W.14 - Doctor, who conducted autopsy on the body of the deceased, had deposed that the injuries found on the body of the deceased would appear to have caused by M.O.1 to M.O.3 and hence, the same is clearly corroborated by the medical evidence.

13. It is also the submission of the learned Counsel for the appellant/accused that since there are very many inconsistencies and improbabilities in the prosecution case projected, the trial Court ought to have awarded the benefit of doubt. However, the said submission is liable to be rejected for



the reason that the evidence should be judged and analysed on the basis of quality and it is also relevant to extract hereunder paragraph 23 of the decision in ***State of Punjab v. Jagir Singh*** reported in **(1974) 3 Supreme Court Cases 277:**

"23. A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

14. In ***State of H.P. v. Lekh Raj and another*** reported in **(2000) 1 Supreme Court Cases 247**, in paragraph 10, it is observed as follows:

"The criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hypertechnicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstance keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hypertechnical approach has to be replaced by a rational, realistic

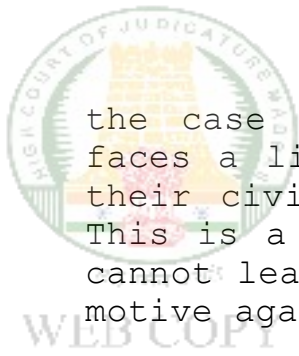


and genuine approach for administering justice in a criminal trial. Criminal jurisprudence cannot be considered to be a utopian thought but have to be considered as part and parcel of the human civilization and the realities of life. The courts cannot ignore the erosion in values of life which are a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and mankind."

15. In the considered opinion of this Court, the testimonies of P.W.1, P.W.2 and P.W.4 are amply corroborated by the materials through the other evidence and it is also believable and trustworthy. The discrepancies pointed out by the learned Counsel for the appellants/A.1 to A.3 do not shake the case of the prosecution case.

16. As already pointed out, the investigation has commenced without any loss of time and Ex.P.1 - complaint and Ex.P.11 - F.I.R had also been despatched to the jurisdictional Magistrate Court without any loss of time and though it is contended by the learned Counsel for the appellants/A.1 to A.3, in Ex.P.1 - complaint, the date of seal of the jurisdictional Magistrate Court has been affixed after two days, on perusal of Ex.P.1 - complaint, it could be seen that the same had been despatched on 24.07.2012 itself and the jurisdictional Magistrate had put his signature with date on the very same day and the date and seal of the Magistrate Court had been affixed at a later point of time and hence, there is no possibility of interpolation in the said document. It is vehemently urged by the learned Counsel appearing for the appellants/A.1 to A.3 that eyewitnesses have accounted for each and every injury in the body of the deceased with corresponding overt acts on the part of each accused person and the same is unnatural and artificial. It was, therefore, contended that the seal found in Ex.P.1 - complaint and Ex.P.11 - F.I.R., shows that it reached two days later and in the meantime, the overt acts described in the complaint were stage managed. We reject this contention since we have categorically found that Ex.P.1 - complaint and Ex.P.11 - F.I.R., reached him on 24.07.2012 itself. The motive for the commission of the offence had been spoken to by P.W.1, P.W.2 and P.W.4 and their evidence inspires confidence and trustworthy and also is corroborated with each other.

17. The other important ground that was urged by the learned Counsel for the appellants/A.1 to A.3 was the civil dispute that was pending between P.W.1 and the deceased and that there was a strained relationship between the parties. Even if this argument is taken as it is, that does not in any way improve



the case of the appellants/A.1 to A.3. When the father/husband faces a life threat, it is but natural that son/wife will forget their civil disputes and will go all out to safeguard his life. This is a very natural human conduct. The civil dispute, per se, cannot lead this Court to assume that P.W.1 and his mother had a motive against the deceased.

18. The time and the place at which the incident took place is such that, it is unlikely for any third party to have witnessed this incident. The availability of light has been sufficiently explained through the Ex.P.12 - Rough Sketch and evidence of P.W.8.

19. In the case on hand, this Court is of the view that P.W.1 had spoken about the incident cogently and also in consonance with Ex.P.1 - complaint and it is also amply corroborated through the other evidence and the trial Court was right in reaching the conclusion to convict and sentence the appellants/A.1 to A.3 accordingly. The trial Court had properly considered the materials and appreciated the oral and documentary evidence in proper perspective and as such, the impugned judgment is to be confirmed.

20. In the result, Crl.A.(MD)Nos.458, 459 and 464 of 2017 are dismissed, confirming the conviction and sentence awarded vide judgment made in S.C.No.103 of 2015, dated 15.09.2017, by the learned IV Additional District and Sessions Judge, Madurai. Consequently, the connected Criminal Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

rsb

To

1.The Court of IV Additional District and Sessions Judge,
Madurai.

2.Do Through The Principal District Judge,
Madurai

3.The Judicial Magistrate No.6, Madurai



4.Do Through The Chief Judicial Magistrate
Madurai

5. The Director General of Police,
Mylapore, Chennai

6.The District Collector, Madurai

7.The Superintendent, Central Prison,
Madurai

8.The Inspector of Police,
Avaniyapuram Police Station,
Madurai District.

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

Copy to
The Section Officer,-2 copies
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+3 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-89142[F] dated
25/09/2019)

COMMON JUDGMENT MADE IN
Criminal Appeal (MD)Nos.458, 459 and 464 of 2017
and
Crl.M.P(MD)Nos.10388, 10403 and 10573 of 2017
24.09.2019

KM/ (09.10.2019) 14P 15C