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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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15.10.2019	24.10.2019

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Criminal Appeal (MD) No.486 of 2017

Ravikumar

... Appellant/Sole Accused

-vs-

State Represented by,
The Inspector of Police,
D-1, Tallakulam Police Station,
Madurai City.
[Crime No.418 of 2013]

... Respondent / Complainant

Prayer: Appeal filed under Section 374 (2) of the Code of Criminal Procedure to set aside the judgment and conviction dated 28.02.2017 by the learned Principal Sessions Judge, Madurai in S.C.No.341 of 2013 and acquit the Appellant.

For Appellant : Mr.S.M.A.Jinnah

For Respondent : Mr.M.Chandrasekaran
Addl. Public Prosecutor

J U D G M E N T

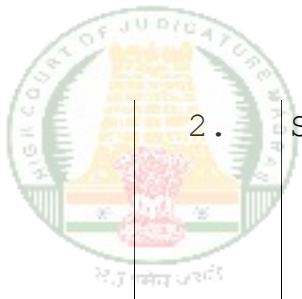
S.VAIDYANATHAN,J.

AND

N.ANAND VENKATESH,J.

The Appellant herein, who is the Sole Accused in S.C.No.341 of 2013 on the file of the learned Principal Sessions Judge, Madurai, stands convicted by the Trial Court for offences under Sections 448 and 302 IPC as follows:

S1.No.	Offence	Conviction and Sentence
1.	Section 448 IPC	To undergo Rigorous Imprisonment for one year with fine of Rs.1,000/- in default to pay fine to undergo Rigorous Imprisonment for further period of Three Months.



2. Section 302 IPC

To undergo Life Imprisonment with fine of Rs.10,000/- in default to pay fine to undergo Rigorous Imprisonment for further period of Six Months.

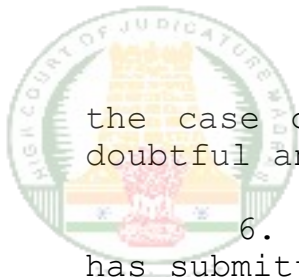
The above sentences were ordered to run concurrently and the period of remand was set off under Section 428 Cr.P.C by the Trial Court. Aggrieved by the order of the Principal Sessions Judge, Madurai, the Appellant has preferred the present Criminal Appeal before this Court.

2. The case of the prosecution in nutshell is that on 19.04.2013 at about 10.30 p.m., the accused, after watching a blue film in the house of one Selvam / P.W.17, had entered into the house of the deceased and started misbehaving with her. Since the deceased refused to adhere to his sexual desire, he attacked her with Aruval on her right neck, right side head, right ear and other parts of the body and caused her death, which resulted in registration of an FIR in Crime No.418 of 2013 for offences under Sections 448 and 302 IPC.

3. After investigation, a charge sheet was laid before the Judicial Magistrate No.2, Madurai in P.R.C.No.62 of 2013 and was subsequently, made over to the Court of Sessions as per Section 209 Cr.P.C. for trial. The prosecution, in order to substantiate the offences against the accused person, has examined 17 witnesses, marked 24 documents and exhibited 20 Material Objects and on the side of the accused, neither any witness was examined nor documents marked. The accused was questioned under Section 313 Cr.P.C. and he denied the charges levelled against him. The Trial Court, after analyzing the evidence let in by the prosecution, found the accused guilty of offences and convicted him as stated supra.

4. The learned Counsel appearing for the Appellant / accused submitted that though P.W.2 had stated that she noticed the entire occurrence through the window of the deceased's house, in the rough sketch produced on the side of the prosecution in Ex.P.21, there was no window marked. Further, it was also reiterated by P.W.3 in his cross examination, who is a Mahazar Witness that no window was found in the house of the deceased and therefore, the evidence of P.W.2 is unreliable. The learned counsel further submitted that there are several material contradictions and omissions found in the evidence of prosecution witnesses, which will affect the root of the case. Moreover, no reason has been adduced on the side of the prosecution as to why the material documents were sent to the Court belatedly.

5. It was also pleaded that P.W.2 deposed that the accused had attacked the deceased in her piscine position and even as per the version of the prosecution, there was no injury found on the backside of the deceased and therefore, there is no corroboration in the version of P.W.2 and P.W.16 / Investigating Officer and hence,



the case of the prosecution in implicating the accused is highly doubtful and unsustainable.

6. The learned counsel appearing for the Appellant / accused has submitted that the recovery of material objects was spoken to by P.W.4, who is a painter and there are a lot of contradictions in his evidence and though he had named the material objects in his chief examination, in the cross examination, there was no mention about the material objects, except describing the location of a Park at Singarayar Colony. Thus, it is clear that the recovery itself is an artificial one and the Police had obtained signature from P.W.4 on the pre-written mahazar, which is fatal to the case of the prosecution.

7. Per contra, Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the State would submit that the deceased got separated from her husband on account of some family dispute and she has two daughters, who have been married and residing in their respective matrimonial houses. The accused, taking advantage of her separation, had entered into the house of the deceased and attempted to have sexual intercourse with her. On her refusal and infuriated by the same, he attacked the deceased with Aruval and had caused her death. It was stated that from the evidence of P.Ws, 1, 2 and 5, it was proved that the accused had the habit of both consuming alcohol and watching blue films in the house of P.W.17 and on the fateful day, the accused being induced by the lust on account of watching blue film, had trespassed into the house of the deceased for forcible sexual intercourse, which ultimately ended in the death of the deceased. The seizure of material objects, viz., M.Os.13 to 16 from the house of the accused is evident to prove his character and his entry into the house of the deceased was noticed by P.Ws. 1 and 2, who are house owner and neighbour respectively. P.W.6, who is a tailor profession was also an eyewitness of the accused holding Aruval in his hand and running away from the house of the deceased. Thus, the prosecution had clearly established the guilt of the accused through testimonies about the overt act on the part of the appellant/accused and their testimonies were corroborated with all material particulars and it is amply supported by the scientific and other evidence.

8. Learned Additional Public Prosecutor appearing for the State would further submit that the injuries sustained by the deceased were spoken to by P.W.2 and her evidence was duly corroborated with the medical evidence, namely, Post Mortem Certificate / Ex.P.19. In sum and substance, it was the submission of the learned Additional Public Prosecutor appearing for the State that since the prosecution had proved the offence committed by the appellant/accused beyond any reasonable doubt and that the appellant/accused, being aware of the consequence of attack on the deceased with Aruval, attacked her and hence, he is not entitled to



and prays for the dismissal of this appeal.

9. This Court has carefully considered the submissions made on either side and perused the materials available on record.

10. The questions that arise for consideration in this case, are:

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

(ii) Whether the reasons assigned by the trial Court in the impugned judgment for convicting and sentencing the appellant/accused are sustainable?

11. The main contention of the accused was that when there was no window marked in the rough sketch prepared by the Investigating Officer in Ex.P.21, the evidence of P.W.2, on the basis of which, the punishment was imposed on the appellant, ought to be discarded. P.W.2 had categorically stated in the chief examination that upon hearing a sound from the house of the deceased, she noticed through the window that the accused had pushed down the deceased and thereafter, attacked the deceased with Aruval. However, in her cross examination, she had deposed that there was a hole on the door of the deceased's house and therefore, an inference can be drawn that she would have noticed the occurrence through that hole. It was further deposed that the house of the deceased was situated adjacent to her house and any person, who wants to visit the deceased, has to pass through her house and thus, the evidence of P.W.2 is inevitable in this case and the question of discarding her evidence does not arise at all.

12. Be that as it may, both P.W.1, who is the owner of the house and P.W.2 / neighbour categorically stated that the accused came down in the stairs of the house of the deceased with Aruval and P.W.1 was scared of resisting the accused. It is quite natural that if a person is armed with a weapon, it is highly unsafe to go near to that person on account of fear and therefore, the conduct of P.Ws.1 and 2 in not raising any hue and cry cannot be said to be unnatural. What the Court wants to ascertain is whether the version of witnesses gets corroborated by the medical evidence.

13. From the evidence of P.Ws.1 and 2, it is crystal clear that it was the accused, who ran out of the house of the deceased with Aruval and on his exit, they immediately went inside the house and saw the dead body of the deceased with severe injuries on her right neck, right side head, right ear, etc and it was P.W.1, who covered the naked body of the deceased with saree. For the purpose of corroboration, this Court feels it appropriate to go through the Post Mortem report of the Doctor to see whether any such injuries are found as stated by the witnesses P.Ws.1 and 2 on the body of the



14. P.W.15 / Dr.Karthick, who had commenced the post-mortem at about 11.00 a.m., on 20.04.2013, had noted the following features in his Post Mortem Certificate, dated 20.04.2013, which is marked as Ex.P.19:

"Identification and caste mark:

- 1) A black mole on centre of abdomen.
- 2) A Scar on left knee.

The body was first seen by the undersigned at 11:00A.M on 20.04.2013. Its condition then was: Rigor mortis present all over the body. Postmortem commenced at 11.00 A.M. on 20.04.2013.

Appearances found at the Post-mortem:

Moderately nourished body of a female, aged about 45 years. Finger & Toe nails are pale.

The following ante mortem injuries are noted on the body:-

1) Transverse cut injury of size 15cm x 8cm x bone deep noted on the right side of neck with regular margin.

On dissection: The wound is found cutting the underlying muscles, vessels, nerves and trachea up to cervical vertebra (C5)

2) Transversely oblique cut injury of size 8cm x 1cm x brain depth noted on right parieto, temporal region with regular margin.

On dissection: Cut fracture of size 7cm x 3cm noted on right parietal region exposing brain through gap.

3) Transversely oblique cut injury of size 11cm x 1cm on cutting the entire thickness of ear and extending back of temporal region up to bone depth with regular margin.

On dissection: Linear fracture 7cm noted on right side temporal region behind right ear.

4) Transversely oblique cut injury of size 17cm x 2cm x bone deep noted in front of face extending from right cheek, nose ending in the left cheek.

On dissection: Underlying upper jaw found fracture.

5) Transversely oblique cut injury 6cm x 2cm x bone deep noted on dorsum of right wrist.

On dissection: Underlying bones found fractured.

6) Transversely oblique cut injury 8cm x 1cm x bone deep noted in medical side of right hand.

On dissection: Underlying muscles, vessels, bones found fractured.

7) Transversely oblique cut injury 8cm x 1cm x bone deep noted on medical side of left hand.

On dissection: Underlying muscles, vessels, bones found fractured.



8) Transversely oblique cut injury 4cm x 2cm x muscle deep noted on left side of lower lip.

On dissection of scalp, skull and dura:

Subscalpal contusion of size 15cm x 8cm x 5cm noted on right fronto, parieto, temporal region. Diffused subdural hemorrhage & subarachnoid hemorrhage noted both the cerebral hemispheres. Laceration of brain size 4cm x 2cm x 1cm noted on right parietal region.

OPINION:

"RESERVED PENDING CHEMICAL EXAMINER'S REPORT"

After receipt of the chemical examiner's report, it was opined by P.W.15 that "the deceased would appear to have died of shock and haemorrhage due to injuries no.1 & 2 and their corresponding internal injuries and cumulative effect of all other injuries 12 - 16 hrs prior to autopsy. From the Post Mortem Certificate, the injuries 1 and 2 are, 1) cut injury of size 15cm x 8cm x bone deep noted on the right side of neck with regular margin and 2) cut injury of size 8cm x 1cm x brain depth noted on right parieto, temporal region with regular margin.

15. From the evidence of P.W.15, it could be easily understood that the deceased had died on account of infliction of several cut injuries, more particularly 1 and 2 and thus, the deposition given by P.Ws.1 and 2 was duly proved / corroborated with the medical evidence. Apart from the above, P.W.11 / Scientific Officer had clearly identified the blood stain in M.Os.7 to 9 and 17 to 19) as B group blood and P.W.16 had stated that upon confession of the accused, M.Os.7 and 8 were seized from the accused and thus, there is a correlation between the evidence of P.Ws.11 and 16. Though there is no evidence of rape and murder, as semen was not found in any of the items, as per the Chemical Examination reports dated 29.04.2013 marked in Ex.Ps.14 and 15, there were blood stains, except in sand. That apart, the main intention of the accused would have been to have a sexual intercourse with the deceased, taking advantage of her solitude, which had been spoken to by P.Ws.1, 2 and P.W.17,, pointing out that the accused used to visit the house of P.W.17, situated adjacent to the house of the deceased for the purpose of drinking liquor, gambling and watching blue film. In particular, P.W.17 had affirmed the visit of the accused to his house one day prior to the death of the deceased and his deposition in chief reads as follows:

".....என் அம்மா போனபின்பு, என் வீட்டிற்கு சிவா மற்றும் ரவிக்குமார் வருவார்கள். என் வீட்டில் மது அருந்துவோம். அதன்பின்பு, வேலையை பார்த்துவிட்டு போய் விடுவோம். ஸெட்கமி இறப்பதற்கு முதல்நாள் நான், சிவா மற்றும் ரவிக்குமார் என் வீட்டில் சந்தித்தோம். அதன்பின்பு, நான் வெளியே



சென் றுவிட் டேன். 19.4.2013-ம் தேதி ஸெட் கமி இறந்தார்

16. A careful scrutiny of the above deposition makes two things clear that one day before the death of the deceased, the accused was present in the close vicinity of the deceased's house. P.W.17 in his chief examination had stated that after completion of the work, they used to disburse from the house and here, the words "after completion of the work" notify the watching of blue film and other unwanted activities and not anything else. Moreover, there is no previous enmity alleged by the accused against P.Ws.1 and 2 and as such, there is no need for them to carry any vengeance against the accused. When there is a direct evidence, the minor contradiction regarding the location of window in the house of the accused, will not dilute the incident that has taken place and the offence committed by the accused / Appellant. Even though the rough sketch does not indicate that there is a window, the diagram reveals the window, apart from the main entrance. In addition, the accused had not shown any incriminating materials against P.Ws.1 and 2 to prove the animosity against P.Ws.1 and 2. P.W.15 / Doctor in his examination had categorically stated that there may be possibilities of causing such injuries as found described in the report in Ex.P.19 by using Aruval / M.O.7, which was blood stained at the time of its seizure.

17. The Hon'ble Supreme Court in the case of **Vadivelu Thevar vs The State Of Madras**, reported in **1957 AIR 614**, held as follows:

"(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character. (2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act has categorically laid it down that "no particular number of witnesses shall in any case be required for the proof of any fact." The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons,



that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's I Law of Evidence -9th Edition, at pp. 1 100 and 1 101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in s. 134 quoted above. The section enshrines the well recognized maxim that " Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for, proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable. In the first category of proof, the court should have no difficulty in coming to its conclusion either way-it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, circumstantial. There is another danger in

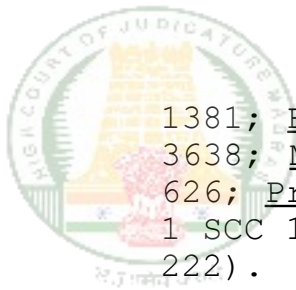


insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution...."

18. The Hon'ble Supreme Court in yet another case in **Yanob Sheikh Alias Gagu Vs. State of West Bengal**, reported in **(2013) 6 SCC 428**, observed that in order to prove its case beyond reasonable doubt, the evidence produced by the prosecution has to be qualitative and may not be quantitative. In **Gulam Sarbar Vs. State of Bihar**, reported in **(2014) 3 SCC 401**, it was observed by the Apex Court as under:-

"19 In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act. Even in Probate cases, where the law requires the examination of at least one attesting witness, it has been held that production of more witnesses does not carry any weight. Thus, conviction can even be based on the testimony of a sole eye witness, if the same inspires confidence. (Vide:

Vadivelu Thevar & Anr. v. State of Madras; AIR 1957 SC 614;
Kunju @ Balachandran v. State of Tamil Nadu, AIR 2008 SC



1381; Bipin Kumar Mondal v. State of West Bengal AIR 2010 SC 3638; Maresh & Anr. v. State of Madhya Pradesh (2011) 9 SCC 626; Prithipal Singh & Ors. v. State of Punjab & Anr., (2012) 1 SCC 10; and Kishan Chand v. State of Haryana JT 2013(1) SC 222).

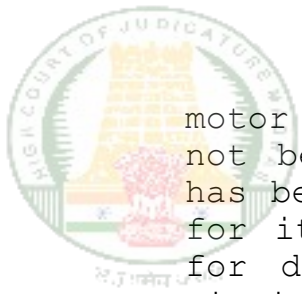
20. If the prosecution had not examined the Panchnama witnesses and witnesses to the arrest memos of the appellants, the appellants could have examined them in their defence".

19. From the above judgments, it is clear that corroboration of the testimony of a witness must depend upon facts and circumstances of each case. The prosecution had duly correlated the testimony of P.Ws.1 and 2 with the medical evidence in this case. Further, it was the quality of evidence which matters for proving a case and not the quantity and therefore, the prosecution case cannot be thrown merely on the basis of minor contradictions, when statements of witnesses 1 and 2 examined are found to be cogent and reliable.

20. The next plea raised by the accused was that there was a delay in lodging complaint and reaching the same to Court. A glance at the depositions of P.W.10 / Head Constable unfolds the fact that the express FIR was handed over to him by his Superior Officer at 1:00am on 20.04.2013, which, in turn reached the court of Judicial Magistrate No.2, Madurai at 6.20am and as per the version of P.Ws.1 and 2, the deceased was done to death at about 10:30pm, as they saw the accused coming down from stairs with a weapon, which is supported by the Post Mortem report / Ex.P.19, stating that the death would have occurred around 10:00pm on 19.04.2013. In addition, P.W.16 / Inspector of Police had also deposed that he had entrusted the FIR to P.W.10 for the purpose of forwarding it to the Court at 1:00am on 20.04.2013. From the above evidence, it is apparent that there is not much delay in registration of FIR and the same reaching the Court within 24 hrs of the occurrence. In a heinous offence of this nature, attracting the punishment of life imprisonment, there would be several formalities before preparation of FIR and it is the duty cast upon the Court to see whether all those formalities had been completed within a reasonable and there is no procedural lapse or undue delay at any stage of the case.

21. The Hon'ble Supreme Court, while dealing with a motor accident case in **Ravi vs Badrinarayan & Others**, reported in **(2011) 4 SCC 693**, has held as follows:

"21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding



motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons."

22. It is the natural conduct of the witnesses to have taken the deceased first to the hospital and after he was declared to have been brought dead, they had gone to the police station for giving a complaint. In this case, P.Ws.1 and 2, while entering the house of the deceased after the murder, had found that the deceased was lying in a pool of blood without any dress on her body and therefore, no necessity arose in this case to send the deceased to a hospital for obtaining such declaration from a Doctor.

23. To controvert the contention put for the by the learned counsel for the Appellant that the recovery was artificial, the learned Additional Public Prosecutor appearing for the State, on the other hand, has taken us through the record to point out that all the procedures were duly followed by the prosecution while effecting recovery and therefore, the conviction and sentence imposed by the Trial Court does not call for any interference by this Court on that ground.

24. The Hon'ble Supreme Court, in a recent judgment in **Kamlakar vs. State of Maharashtra**, reported in **2019 (7) SCC 260**, while dealing with a case in respect of recovery, has observed as follows:

"7....The blood-stained clothes of the deceased and also blood stained 'katti' was recovered at the instance of the Appellant from his house in the presence of panchas under the memorandum panchnama which are marked as Exhibits 39 and 40, which was in the presence of Subhash Waghmare (PW-13). The same had been sent to the Regional Forensic Laboratory, Aurangabad and a report had been obtained. In that circumstance, when the weapon used for committing the offence had been recovered in the manner known to law and the appropriate reports were also obtained, the contention on behalf of the Appellant that the recovery of the weapon is not believable cannot be accepted.

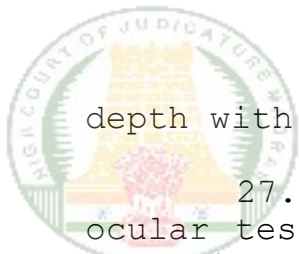
8. Insofar as the evidence of eye witnesses, namely, Baburao (PW-1) and Rashtrapal (PW-8) the same indicates that the entire sequence of the events as contained in the complaint have been stated. It is no doubt true that PW-1 in his cross-examination had stated that the wooden cot in the



map i.e., the spot panchnama is not visible unless one enters into the house of the Accused No. 3 Dilip. He has also stated that the victim Dhammanand was killed on the spot by the Kamlakar by inflicting blow with 'katti'. Further, the said witness has also been chased with intention to attack. As rightly taken note by the Sessions Court as well as the High Court, that even if it is assumed that the Accused Nos. 5 and 6 were at the door and had prevented Baburao (PW-1) and Rashtrapal (PW-8) at entrance of the door of the house of Accused No. 3 - Dilip, it would only indicate that they were standing at the threshold of the entrance to the house and in such circumstance there was every possibility of witnessing the occurrence of the incident in the house of the Accused. Furthermore, all other aspects relating to the earlier sequence of events which had led to the incident having occurred in the house of Dilip is taken note and when the Appellant as also the deceased were inside the house and in the circumstance the death on the spot had occurred, the death in the manner as contended by the prosecution and spoken to by PW-1 and PW-8 is to be accepted. Further the said witnesses PW-1 and PW-8 were also chased by the Appellant from the very spot where the incident occurred. That apart, the 'katti' was recovered and the forensic report also supported the case of the prosecution."

25. In the present case, the recovery was spoken to by P.W.4 and the blood group found on the Arvual tallies with the blood group of the deceased as per the Serology Report / Ex.P.16 and therefore, it cannot be, at any stretch of imagination, said that the recovery was artificial and the said submission has no substance and may not be helpful to the accused in getting exoneration from the case.

26. The next argument advanced by the learned counsel for the Appellant was that there was no injury on the backside of the deceased, which runs contrary to the statement made by P.W.2 that she witnessed the occurrence through the window, when the accused was hitting on the backside of the deceased. To consider the above submission, it is appropriate to have a look at the deposition of the Doctor / P.W.15, who had conducted the Post Mortem of the deceased and submitted a report in Ex.P19 / Post Mortem Certificate and the Doctor, in his examination, had categorically stated that there were several injuries found on the body of the deceased, including the one on the backside of the right portion of the head and cross injuries on both side of the body. In a brutal murder, it cannot be expected that the injury must be exactly on the backside of the body, as there is every chance of the deceased in trying to escape from the attack of the accused and in that attempt, the deceased would have sustained injuries here and there. In Ex.P.19, there is an indication in regard to Injury No.3 that there is an oblique cut injury of size 11cm x 1cm on cutting the entire



depth with regular margin.

27. Considering the totality of the circumstances and the ocular testimony adduced on the side of the prosecution, we are of the view that there is no prima facie ground raised in the memorandum of appeal to interfere with the judgment of the Trial Court and no mercy can be shown to the accused in this case.

28. Accordingly, the Criminal Appeal is dismissed, confirming the conviction and sentence awarded vide judgment made in S.C.No.341 of 2013, dated 28.02.2017, by the learned Principal Sessions Judge, Madurai.

Sd/-

Assistant Registrar(CS-I)

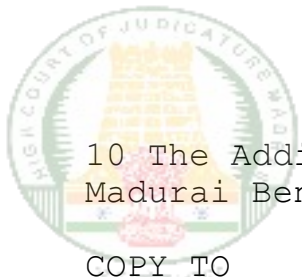
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Sub Assistant Registrar(CS)

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To:

1. THE PRINCIPAL DISTRICT JUDGE,
MADURAI.
2. THE PRINCIPAL SESIONS JUDGE,
MADURAI.
3. THE JUDICIAL MAGISTRATE NO.II,
MADURAI.
4. THE CHIEF JUDICAL MAGISTRATE,
MADURAI.
5. THE DISTRICT COLLECTOR,
MADURAI.
6. THE DIRECTOR GENERAL OF POLICE,
MYLAPORE, CHENNAI 6
7. THE SUPERINTENDENT OF POLICE,
MADURAI.
8. THE INSPECTOR OF POLICE,
D-1, TALLAKULAM POLICE STATION, MADURAI CITY.
9. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.



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

COPY TO
The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

PRE-DELIVERY JUDGMENT MADE IN
Criminal Appeal (MD) No.486 of 2017
24.10.2019

sv2 (CO)
TR(07.11.2019) 14P 13C