



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
15.10.2019	01.11.2019

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN**AND****THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH****Criminal Appeal (MD) No.504 of 2017**

Chandran

... Appellant/Accused No.1

-vs-

State Represented by,
The Inspector of Police,
Karivalam Vantha Nallur Police Station,
Thirunelveli District.

[Crime No.18 of 2016]

... Respondent / Complainant

Prayer: Appeal filed under Section 374 (2) of the Code of Criminal Procedure to admit this appeal and call for the records relating to the judgment dated 20.10.2017 in S.C.No.139 of 2017 on the file of the IV Additional District and Sessions Judge, Thirunelveli and set aside the same by acquitting the appellant and allow this Criminal Appeal.

For Appellant : Mr.C.Vakeeswaran

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

J U D G M E N T**S.VAIDYANATHAN, J.****AND****N.ANAND VENKATESH, J.**

There are two accused in this case and the 2nd Accused, who is the wife of the 1st Accused was acquitted from the charges. The Appellant herein, who is the 1st Accused in S.C.No.139 of 2017 on the file of the IV Additional District and Sessions Judge, Thirunelveli, stands convicted by the Trial Court for an offence under Section 302 IPC as follows:

S1.No.	Offence	Conviction and Sentence
1.	Section 302 IPC	To undergo Life Imprisonment with a fine of Rs.1,000/- in default to pay fine to undergo Rigorous Imprisonment for further period of One Year.

The period of remand already undergone by the 1st Accused was ordered to be set off under Section 428 Cr.P.C by the Trial Court. Aggrieved by the order of the IV Additional District and Sessions Judge, Thirunelveli, the Appellant/A1 has preferred the present Criminal



Appeal before this Court.

2. The case of the prosecution in brief is that on 17.01.2016 at about 03.15 p.m., when the deceased was sitting on the western side of the Kanmoi (also known as a small Pond), due to previous enmity, the 1st Accused had attacked the deceased with spade and his wife / A2 had caught hold of the deceased. At the time of occurrence, P.Ws.1 and 2, who were standing on the eastern side of the Kanmoi, rushed to the spot immediately and found that the deceased was pushed down into the Kanmoi and noticed that the deceased had already attained eternity. P.W.1, who is none other than the brother of the deceased had lodged a complaint with the respondent Police and on receipt of the same, initially a case was registered in Crime No.18 of 2016 for offences under Sections 342 and 302 r/w 34 IPC. After investigation, a charge sheet was laid before the Judicial Magistrate, Sankarankovil in P.R.C.No.17 of 2016 and was subsequently, made over to the Court of Sessions as per Section 209 Cr.P.C. for trial, pursuant to the commission of offences falling under Section 302 IPC. The prosecution, in order to substantiate the offences against the accused persons, has examined 13 witnesses, marked 17 documents and exhibited 6 Material Objects and on the side of the accused, one witness was examined and one document was marked. Before commencement of Trial, charges were altered and framed under Section 302 IPC against A1 and Sections 302 r/w 109 IPC against A2. 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 1st accused guilty of the offence and convicted him as stated supra, thereby the 2nd accused / his wife was let off. It is not known as to why the State has not preferred any appeal against the acquittal of A2.

3. The foremost submission made by the learned counsel appearing for the Appellant / A1 that the evidence of eye witnesses, namely, P.Ws.1 and 2 is wholly unreliable and unbelievable, as they are close relatives of the deceased, thereby they can be termed as interested witnesses. Though it was stated by P.Ws.1 and 2 that immediately after the occurrence, they lifted the body of the deceased from the Kanmoi, there was no blood stain in their dresses, which creates suspicion over their evidence. The learned counsel further submitted that the murder had taken place in the public place, where there were several other persons working in the paddy / agricultural field and amazingly, none of them was examined by the prosecution, which is utter fatal to the prosecution case.

4. It was argued on the side of the Appellant / A1 that as per the version of the prosecution, spade was used by the accused for causing death of the deceased and even if it is accepted, there would be a blood stain on the spade. But, the evidence of P.W.6 / Deputy Director of Forensic Department shows that there was no such blood stain found on the material object. Similarly, it was the case



of the prosecution that while attacking the deceased with spade, the same got broken into two pieces, which were marked as M.Os.1 and 2 and on a perusal of the complaint, nowhere it was stated that at the time of occurrence, the weapon was broken and dropped.

5. The learned Counsel appearing for the Appellant / A1 has further submitted that in the complaint, P.W.1 had stated about the involvement of other accused persons in the commission of the offences and the Police, having failed to trace out real culprits, had implicated the Appellant and his wife in the occurrence, by falsely stating that owing to political enmity between the deceased and the accused, the murder had taken place. However, the prosecution had failed to prove the membership of the accused in anyone of the political parties.

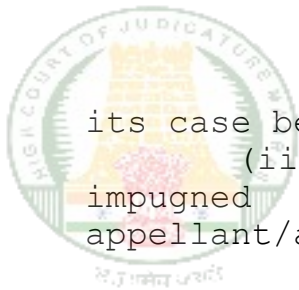
6. It was the case put forth by the learned counsel appearing for the Appellant / accused that the Trial Court, having smelt rat in the case of the prosecution regarding recovery of material objects, ought to have acquitted the accused by giving the benefit of doubt in his favour and therefore, the judgment rendered by the Trial Court is liable to be set aside. The next plea raised by the accused was that there was a delay in lodging complaint and reaching the same to Court. Though the complaint was lodged at 4.45pm on 17.01.2016 and FIR got registered at about 6.00pm on the same day by the Sub-Inspector of Police, it reached the Court on the next day at 3.00am and therefore, the entire story narrated by the prosecution against the accused in the FIR is a concocted one.

7. Per contra, Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the State would submit that the deceased was brutally attacked by the accused with spade and thereafter, the body was pushed into a Kanmoi. The prosecution had clearly established the case against the accused beyond reasonable doubts through testimonies as well as eyewitnesses 1 and 2 and the seizure of material objects, more particularly, M.Os.1 and 2 corroborates the version of the eyewitnesses about the attack made by the accused. Thus, all the testimonies relied upon by the prosecution were duly corroborated by both oral and documentary evidence, besides supported by the scientific and other evidence. Hence, it was prayed that there is no ground made in the appeal, warranting interference by this Court and the appeal is to be dismissed *in limine*.

8. This Court has given its anxious consideration to the submissions made on either side and perused the materials available on record.

9. 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?

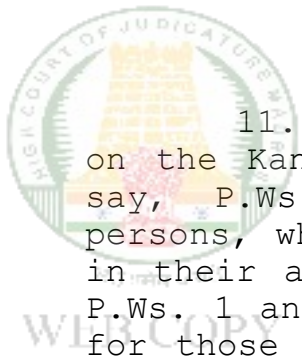
10. The primary argument advanced by the learned counsel for the Appellant / A1 was that despite the occurrence, having taken place in a crowded place surrounded by several agricultural coolies, except the relatives of the accused, viz., P.Ws.1 and 2, none of the other witnesses were examined on the side of the prosecution. It is pertinent to mention here that the Hon'ble Supreme Court in the case of 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 further 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; Mahesh & 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".



11. Admittedly, the deceased and P.Ws.1 and 2 were standing on the Kanmoi, but, of course in different direction, that is to say, P.Ws.1 and 2 were facing eastern side of the Kanmoi and other persons, who were stated to have witnessed the occurrence were busy in their agricultural work in the field at a far off place. Since P.Ws. 1 and 2 were at a close distance, there is every possibility for those witnesses spotting out the entire occurrence and by the time other witnesses rushed to the spot, the accused persons have disappeared from the place of occurrence. Merely because other witnesses were not examined and that P.Ws. 1 and 2 are close relatives of the deceased, the theory put forth by the prosecution cannot be completely discarded. The only thing to be ensured by the Court is, as to whether the evidence adduced by such witnesses tallies with the statement made in the complaint and is corroborated by the medical evidence.

12. The Hon'ble Supreme Court in yet another case in 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. 100 and 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, direct or 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...."

13. The Hon'ble Supreme Court in **Raju @ Balachandran & Ors vs State of Tamil Nadu [Crl.A.No.1614 of 2009]** reported in **2012 (12) SCC 701**, while considering the distinction between a related witness and an interested witness, had observed as follows:

"28. Before us, only two contentions were advanced by learned counsel for the appellants. Firstly, it was contended that since PW-5 Srinivasan was a related and interested witness, his evidence must be closely scrutinized, and if his testimony is put to close scrutiny, it will be quite clear that he ought not to be believed. Secondly, it was contended that the prosecution case was doubtful since there was no evidence except the unreliable testimony of PW-5 Srinivasan.

29. The first contention relates to the credibility of PW-5 Srinivasan. It was said in this regard that he was a related witness being the elder brother of Veerappan and the son of Marudayi both of whom were victims of the homicidal attack. It was also said that he was an interested witness since Veerappan (and therefore PW-5 Srinivasan) had some enmity with the appellants. It was said that for both reasons, his testimony lacks credibility.

30. What is the difference between a related witness and an interested witness? This has been brought out in *State of Rajasthan v. Kalki*, (1981) 2 SCC 752. It was held that:

"True, it is, she is the wife of the deceased; but she cannot be called an "interested" witness. She is related to the deceased. "Related" is not equivalent to "interested". A witness may be called



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"interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested".

31. In light of the Constitution Bench decision in State of Bihar v. Basawan Singh, AIR 1958 SC 500 the view that a "natural witness" or "the only possible eyewitness" cannot be an interested witness may not be, with respect, correct. In Basawan Singh, a trap witness (who would be a natural eyewitness) was considered an interested witness since he was "concerned in the success of the trap". The Constitution Bench held:

"The correct Rule is this: if any of the witnesses are accomplices who are particeps criminis in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations which must vary from case to case, and in a proper case, the court may even look for independent corroboration before convicting the accused person."

32. The wife of a deceased (as in Kalki), undoubtedly related to the victim, would be interested in seeing the accused person punished - in fact, she would be the most interested in seeing the accused person punished. It can hardly be said that she is not an interested witness. The view expressed in Kalki is too narrow and generalized and needs a rethink.

33. For the time being, we are concerned with four categories of witnesses - a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorization of a witness, the issue really is one of appreciation of the evidence of a witness. A court should examine the evidence of a related and interested



witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness. This is all that is expected and required.

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34. In the present case, PW-5 Srinivasan is not only a related and interested witness, but also someone who has an enmity with the appellants. His evidence, therefore, needs to be scrutinized with great care and caution.

35. In Dalip Singh v. State of Punjab, 1954 SCR 145 this Court observed, without any generalization, that a related witness would ordinarily speak the truth, but in the case of an enmity there may be a tendency to drag in an innocent person as an accused - each case has to be considered on its own facts. This is what this Court had to say:

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

36. How the evidence of such a witness should be looked at was again considered in Darya Singh v. State of Punjab, (1964) 3 SCR 397. This Court was of the opinion that a related or interested witness may not be hostile to the assailant, but if he is, then his evidence must be examined very carefully and all the infirmities taken into account. It was observed that where the witness shares the hostility of the victim against the assailant, it would be unlikely that he would not name the real



assailant but would substitute the real assailant with the "enemy" of the victim. This is what this Court said:

"There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it..... [I]t may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of the enemy of the family out of malice. The desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars."

37. More recently, in *Waman v. State of Maharashtra*, (2011) 7 SCC 295 this Court dealt with the case of a related witness (though not a witness inimical to the assailant) and while referring to and relying upon *Sarwan Singh v. State of Punjab*, (1976) 4 SCC 369, *Balraje v. State of Maharashtra*, (2010) 6 SCC 673, *Prahlad Patel v. State of Madhya Pradesh*, (2011) 4 SCC 262, *Israr v. State of Uttar Pradesh*, (2005) 9 SCC 616, *S. Sudershan Reddy v. State of Andhra Pradesh*, (2006) 10



SCC 163, State of Uttar Pradesh v. Naresh, (2011) 4 SCC 324, Jarnail Singh v. State of Punjab, (2009) 9 SCC 719 and Vishnu v. State of Rajasthan, (2009) 10 SCC 477 it was held:

"It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinise their evidence meticulously with a little care."

38. The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in Dalip Singh and pithily reiterated in Sarwan Singh in the following words:

"The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration."

39. We have gone through the evidence of PW-5 Srinivasan by applying the discerning scrutiny standard and find it difficult to overturn the view expressed by both the Courts in their acceptance of his evidence. His description of the events is simple and straightforward and the cross-examination does not demolish his version of the events. In fact, the cross-examination is directed more at proving that one Subramaniam may have been the assailant since Veerappan had an illicit relationship with Subramaniam's first wife Periammal. This was ruled out by PW-5 Srinivasan who did not want to shield the real assailant and put the blame for the occurrence on someone else.

40. As far as the second contention is concerned, it overlaps with the first. Both the Trial Court and the



High Court have concurrently held that PW-5 Srinivasan was an eye witness to the murder of Veerappan and Marudayi. The conclusion arrived at by both the Courts has not been shown to be perverse in any manner whatsoever nor has it been shown deserving of reversal.

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41. The presence of PW-5 Srinivasan at the place of occurrence cannot be doubted in view of the FIR lodged by PW-1 Thangavel and his testimony. Even though PW-1 Thangavel may have turned hostile, the fact remains that a report was made to the police about the homicidal attack on Veerappan and Marudayi. That there was a homicidal attack on them is not in dispute. This is confirmed even by the witnesses who turned hostile. It is also not in dispute that Veerappan died on the spot and that Marudayi was grievously injured. This too is confirmed by the witnesses who turned hostile. That PW-5 Srinivasan took Marudayi to the hospital immediately after she was attacked is confirmed by PW-1 Thangavel. On the basis of these facts, which are evident from the record, there is no option but to accept the conclusion of both the Courts that PW-5 Srinivasan was present at the place of occurrence and was an eye witness to the incident. His testimony is not unreliable but is supported in its essential details by the testimony of the other witnesses.

Conclusion:

42. We find the evidence of PW-5 Srinivasan credible notwithstanding that he was a related and interested witness. Accordingly, we uphold the conviction and sentence awarded to the appellants by the Trial Court and confirmed by the High Court.

43. The appeal is dismissed."

14. A cursory glance at the deposition of P.Ws.1 and 2 exhumes the fact that the 1st Accused had attacked the deceased on his head repeatedly and the 2nd Accused had caught hold of the accused with full force, which curtailed even the slight movement of the deceased in order to avoid the attack. When they rushed to the spot, both the accused ran away from the place, by pushing the deceased into the Kanmoi. In order to ascertain as to whether any severe injuries are found on the head of the deceased, it is proper in the circumstances to peruse the Post Mortem Report dated 17.01.2016, which is marked as Ex.P.7, in which it is stated as follows by P.W.5 / Dr.Mariraj, who had commenced the post-mortem at 11.00 a.m. on 18.01.2016 and had noted the following features in his Post Mortem Certificate

"Identification and caste mark:

1) வலது பக்க வயிற்றில் கருப்பு, மச்சம்

2) இடதுகால் கரண்டை பக்கம் காயத்தழும்பு,



3) வலது பக்க முழங்காலில் காயத்தழும்பு,

The body was first seen by the undersigned at 11:00A.M on 18.01.2016. Its condition then was Rigor mortis present in all 4 limbs. Post-mortem commenced at 11.00 A.M. on 18.01.2016.

Appearances found at the Post-mortem:

Body lying of back, moderately built and nourished symmetrical, black iris and black hairs of 3cms, Rigor mortis present in all 4 limbs. 8/7-8/8 eyes closed, froth from mouth present. Tongue inside mouth.

1) Abrasion over the nose-central part.

2) தலையின் நடுவில் நெற்றிக்கு சுற்று பின்னால் 4 x 3 செ.மீ, 4 செ.மீ ஆழ வெட்டுகாயம் குறிபோல் காணப்பட்டது.

3) அதன் பின்னால் 10 x 3cm வெட்டுகாயம், எலும்பு, ஆழத்திற்கு காணப்பட்டது.

4) இரண்டிற்கும் நடுவே நீளவாட்டில் 8 x 3cm வெட்டுகாயம் எலும்பு, ஆழத்திற்கு காணப்பட்டது.

5) இடது தோள்பட்டையில் 7 x 1 செ.மீ, சிராய்ப்பு, காயம் ஏற்பட்டது.

Internal Examination:-

Chest, Lung congested and boggy present. Normal anatomy, No fracture, Heart was normal without any blood clots, Hyoid intact.

Abdomen:-

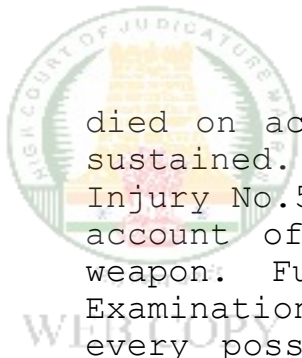
Stomach contained 200ml of partially digested food particles without any characteristic smell, stomach small, Large intestines congested, Liver, pancreas, Spleen, Kidneys are normal and congested without any injuries. Bladder was empty, **Skull:-** On opening blood clots and lacerations mark over the skull vault present. 4 x 3 cm depression upto brain matter present. Brain over the front and central part had a depression of 2cms depth with about 100ml over the whole surface of the brain beneath the membranes skull bone bits were seen into the brain. The autopsy concluded by 12.00 noon on 18.01.16 and death would have occurred about 18 to 24 hours before autopsy.

Opinion to cause death

(a) Reserved pending report of

(b) The deceased would appear to have died of Shock and Haemorrhage due to the **head injuries sustained.**

<https://hdservices.courts.gov.in/hdservices> had finally opined that the deceased would have

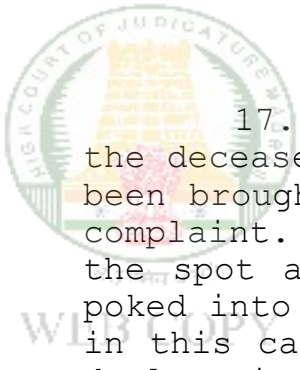


died on account of shock and haemorrhage due to the head injuries sustained. In the chief examination, the Doctor had deposed that the Injury No.5, which was found on the left shoulder of the deceased on account of fractural wound could have happened by using a sharp weapon. Further, it was revealed by the Doctor in the Chief Examination that since the body was pushed into water, there is every possibility of water being filled up in the lungs of the deceased. From the evidence of P.W.5, it could be easily understood that the deceased had died on account of injuries on the head and thus, the deposition given by P.Ws.1 and 2 was duly proved / corroborated with the medical evidence.

15. The next plea raised by the accused was that there was a delay in lodgment of FIR and reaching the Court. A careful scrutiny of the deposition of P.W.8 / Grade-II Constable unfolds the fact that the FIR was handed over to him by his Superior Officer at 6:00pm on 17.01.2016 for the purpose of reaching it to the concerned jurisdictional Court, namely, Judicial Magistrate, Sankarankovil and since the Judicial Officer was not present on the said date on account of Sunday being holiday, immediately he went to the Judicial Magistrate, Valliyur, who was in-charge of the Judicial Magistrate Court, Sankarankovil and handed over the same at 3.00am on 18.01.2016. From his deposition, it is apparent that there was no delay in preparation of FIR and on account of non-availability of the jurisdictional Magistrate, it was handed over to the in-charge Magistrate, which cannot be construed as delay on the part of the prosecution at all and the procedures adumbrated under Section 154 Cr.P.C. have been duly complied with.

16. 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."



17. 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. Strangely, in this case, P.Ws.1 and 2, while rushing to the spot after the brutal attack, had found that the deceased was poked into the Kanmoi and was dead and therefore, no necessity arose in this case to send the deceased to a hospital for obtaining such declaration from a Doctor.

18. It was the case of the Appellant / A1 that though the body of the deceased was lifted from the Kanmoi by P.Ws.1 and 2, it is quite astonishing that there was no blood stain found on the dresses worn by them. To rebut the above contention, it is significant to look at the cross examination of P.W.2, who had deposed as under:

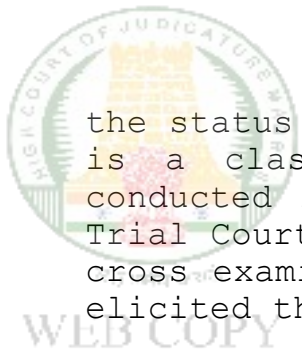
“.....தண்ணீருக்குள் விழுந்த என் தம்பியை நானும், பச்சைராஜீம் தான் தூக்கி கரையில் வைத்தோம். என் தம்பியை தண்ணீரிலிருந்து தூக்கி கரையில் வைக்கும் போது என்னுடைய உடைகளில் இரத்தம் படவில்லை, கைகளில் மட்டும் தான் இரத்தம் பட்டது....”

19. From the above, it is clear that while lifting the body of the deceased from the Kanmoi, there was no blood stain on their dresses. Moreover, the body was choked into water by the accused and even assuming for the sake of argument that the deceased was lying in a pool of blood in the water, there is every possibility of the blood being washed away by the movement of water and the chances of sustaining blood stain on their dresses is remote and bleak and therefore, the said defence taken by the accused has no legs to stand.

20. It was further case of the Appellant / A1 that though there was a mention in the complaint about the usage of a spade in the occurrence, P.W.1 had not stated that the spade was broken into pieces, when the deceased was attacked by the accused. While examining the P.W.1 in chief, he had stated that he is capable of identifying the spade and its broken parts and thus, it is clear that the spade got broken at the time of incident and the deposition and statement given by P.W.1 has to be read in conjunction with that of P.W.2, who had described the incident as under:

“.....வது எதிரி சந்திரன் தன் கையில் வைத்திருந்த மண் வெட்டியால் என் சித்தப்பா ஜீவராஜின் உச்சந்தலையில் மாறி மாறி வெட்டினார். வெட்டும் போது அந்த மண் வெட்டி கணை உடைந்து, மண் வெட்டி கணையின் ஒரு பகுதியோடு மண் வெட்டி கீழே விழுந்தது....”

Thus, it could be easily concluded that the factum of the spade being broken had been clearly established by the prosecution beyond reasonable doubt and therefore, there is no contradiction between the statement given by P.W.1 in the complaint and his deposition. When there is a direct evidence, the minor contradiction regarding



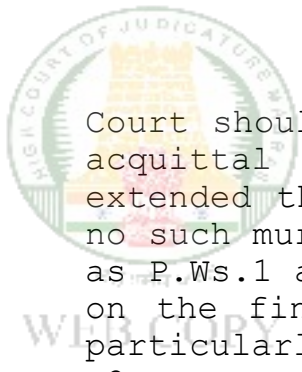
the status of material objects need not be given much importance. It is a classic case as to how cross examination should not be conducted in the manner as done by the defence counsel before the Trial Court, which was utterly detrimental to the accused and in the cross examination of P.W.1, the counsel for the accused had clearly elicited the way in which the murder had taken place.

21. The next point canvassed by the accused was that the deceased was not a member of any political party and therefore, the question of political rivalry between the accused and deceased does not arise at all. Though the deceased was not a member of any political party, from the reading of the deposition of P.W.1 in the cross examination, it could be understood that he was a true follower of a leader of a political party. It was the submission of the learned counsel for the Appellant / A1 that when the Trial Court had disbelieved the theory of the prosecution in respect of A2, the same yardstick should be adopted in the case of the 1st accused so as to acquit him from the commission of offences. We are not inclined to accept the said contention, as there is no need for this Court to look into the judgment of the Trial Court for the purpose of deciding the case and a reading of the judgment of the Trial Court, especially Paragraph No.19, discloses the fact that the reason given by the Trial Court for acquitting the 2nd Accused is based on surmises and conjectures, even though P.Ws.1 and 2 had categorically stated about the involvement of the 2nd accused in the crime and she was also charged for offences under Sections 302 r/w 109 IPC. Since there is no appeal preferred by the State against the acquittal of A1, we are unable to say anything on that further. Merely because A2 has been acquitted, it does not mean that no incident as alleged by the prosecution had taken place.

22. In the given circumstances, finding no contradiction between the medical and the ocular testimony, 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 thereby, the judgment of Trial Court in respect of the Appellant/A1 is liable to be upheld.

23. Accordingly, **the Criminal Appeal is dismissed**, confirming the conviction and sentence awarded against the Appellant herein vide judgment made in S.C.No.139 of 2017 dated 20.10.2017 by the learned IV Additional District and Sessions Judge, Thirunelveli

24. Before parting with the judgment, we have no other option, but to make observations with regard to the acquittal of A2 by the Trial Court. The Trial Court had given a finding in respect of acquittal of A2 to the effect that if the evidence of P.Ws.1 and 2 is accepted that A2 caught hold of the deceased, there is a possibility of A2 sustaining injuries and there was no injury found on A2, when A1 attacked the deceased on the head repeatedly and the said finding in respect of A2 was given on mere surmises. When there is an offence committed by A2 under Section 302 r/w 109 IPC, the



Court should not have granted the benefit of doubt to A2 and if the acquittal of A2 is accepted, then naturally, A1 should also be extended the same benefit and in that case, it has to be held that no such murder had taken place as alleged by the prosecution as well as P.Ws.1 and 2. However, we do not want to comment anything further on the finding of the Trial Court and we leave it at that, more particularly since no appeal has been filed against the acquittal of A2.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

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To:

- 1.The IV Additional District and Sessions Judge,
Thirunelveli
- 2.The Judicial Magistrate,
Sankarankoil, Tirunelveli District.
- 3.The Inspector of Police,
Karivalam Vantha Nallur Police Station,
Thirunelveli District.
- 4.The Superintendent of Prison,
Central Prison, Palayangottai, Tirunelveli.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 6.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 C)

+1 CC to M/s.C.VAKEESWARAN, Advocate (SR-95536[F] dated
01/11/2019)

Criminal Appeal (MD) No.504 of 2017
01.11.2019

AR
KK/05.11.2019/17P-9C