

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 17-12-2019

JUDGMENT DELIVERED ON:04-06-2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRIMINAL APPEAL NO.286 OF 2018

Vikesh Verghese ... Appellant/Accused

Versus

State represented by
The Inspector of Police (L&O)
F-5, Choolaimedu Police Station
Chennai - 600 094
(Crime No. 2962 of 2011) ... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure against the Judgment dated 02.03.2018 passed in S.C.No.97 of 2012 on the file of the VI Additional Sessions Court, Chennai.

For petitioner : Mr.K.Sukumaran
for Mr.U.M.Ravichandran
For respondent : Mrs.M.Prabhavathi
Additional Public Prosecutor

JUDGMENT

R.Subbiah, J

This appeal is directed against the Judgment dated 02.03.2018 passed by the learned VI Additional Sessions Judge, Chennai in S.C.No.97 of 2012. By the said Judgment, the appellant was convicted under Section 302 IPC and sentenced to undergo imprisonment for life with fine of Rs.1,000/-, in default, to undergo one year rigorous imprisonment.

2. The case projected by the prosecution as against the appellant/ accused is briefly stated hereunder.

3. PW1 - Ganesan was the Manager (in-charge) of Sri Vidya

lodge at Choolaimedu, Chennai. The appellant/accused was staying in Room No.205 of the lodge, whereas the deceased Rajesh was staying in the first floor in Room No.208. It is the case of the prosecution that four months prior to the occurrence, due to misunderstanding between the appellant and the deceased, a quarrel erupted between them. Due to such quarrel, the appellant was asked to vacate the Room during July 2011 and accordingly, the appellant vacated the Room occupied by him in the lodge. Thereafter, the deceased, who was occupying Room No.208, was shifted to Room No.306 in the second floor.

4. The further case of the prosecution is that on 06.12.2011, when PW1 was in the lodge at about 10.45 am, the accused came to the lodge. He enquired with PW1 as to where the deceased Rajesh was staying. When PW1 questioned as to why he is searching for the deceased, especially when he had a difference of opinion with the deceased, it was replied by the accused that subsequently, he got acquainted with the deceased and therefore, he wanted to meet him out of friendship. Therefore, PW1 disclosed the Room where the deceased was staying and the accused proceeded towards the said Room. Shortly thereafter, PW2, Vasanthan, who was staying in Room No.304, informed PW1 that there was a commotion in Room No.306 and therefore, requested PW1 to come over there. When PW1 went to Room No.306, the door was locked from inside. Therefore, PW1 peeped through the window and saw the deceased lying in the ground with stab injuries. PW1 also saw that the blood was splashed all over the wall. A blood stained knife was found on the bed. He also saw the accused inside the Room. Therefore, PW1 locked the Room from outside, came to the ground floor and called Ambulance. PW1 also informed the owner of the lodge, by name Velusamy and also disclosed the incident over phone to the Choolaimedu Police Station. On the basis of such information, the Police personnel reached the lodge at about 1.00 pm. PW1 had taken the Police party to Room No.306 and on opening the Room, they saw the accused inside the Room. They have also examined the body of Rajesh and confirmed that he is dead. Thereafter, the accused was taken by the Police party to the Police Station. It was also stated by PW1 that the Police party have recovered the blood stained knife (M.O.1) from Room No.306.

5. On the basis of the written complaint given by PW1, a case in Crime No. 2962 of 2011 was registered by PW11, Inspector of Police at 1.00 pm. Ex.P11 is the First Information Report which was forwarded to the Court. PW11 also called the Photographer, PW6 to photograph the scene of occurrence. PW11 also prepared an observation mahazar under Ex.P12 and a rough sketch/Ex.P13 in the presence of P.W.7 Dinakaran and Anandan. He also collected the blood stained tiles and ordinary tiles, the blood stained knife under a seizure Mahazar, Ex.P14 and sent

the seized material objects under Form No.91, marked as Ex.P15. In the place of occurrence, PW11 also conducted an inquest in the presence of the witnesses Prathap Pandian, Shankar, Manoharan, Dhanasekaran, Selvaraj and Chettaji. Ex.P16 is the inquest report. After concluding the inquest, PW11 sent the body of the deceased through P.W.8 Balakrishnan, Constable to Kilpauk Medical College Hospital, Chennai.

6. Dr.Shanmuga Ganapathy, PW10 conducted autopsy on the body of the deceased. After conclusion of autopsy, he issued Post-mortem Certificate Ex.P-10, in which he has opined that the deceased appeared to have died of shock and haemorrhage due to multiple stab injuries numbering 23.

7. In continuation of the investigation, PW11 arrested the accused in the place of occurrence itself. After such arrest, he recorded the voluntary statement of the accused at about 4.00 p.m. on the same day. After such voluntary statement, on being identified by the accused, PW11 recovered the knife, Cigarette Lighter, Petrol Can containing petrol and they were recovered under Ex.P-14 Mahazar. PW11 also recovered the blood stained pant and shirt worn by the accused at the time of occurrence under Ex.P-17 Recovery Mahazar. Thereafter, the accused was produced before the Court and remanded to judicial custody.

8. In the course of investigation, PW11 collected the payment receipts issued by PW1 to the deceased as well as the accused, for having occupied the Rooms in the lodge and they were marked as Ex.P2. Further, PW11 recorded the statement of Vasanthan - PW2, Ravichandran, P.W.3 Joshua, Selva, Jain, Sudish Sankaran, Anandkumar, P.W.7 Dhinakaran, Anandan, P.W.5 Bellvin, Saravanan, P.W.6 Rajesh - Photographer and Dr.Dharmaraj, Dr.Jayanthi Sakthi Sekaran and Visalakshi. Thereafter, PW11 laid the charge sheet against the accused for the offence punishable under Section 302 IPC.

9. Before the trial court, in order to prove the case of the prosecution against the accused, P.Ws.1 to 11 were examined. The prosecution also marked Exs.P-1 to P-28 and produced M.Os.1 to 10. When the appellant/accused was questioned under Section 313 Cr.P.C., he denied his complicity in the crime. On behalf of the defence, no one was examined, however, Exs.D-1 to D-3 were marked as defence side exhibits.

10. On a consideration of the oral and documentary evidence, the trial court accepted the case put forward by the prosecution and convicted and sentenced the appellant/accused for the offence under Section 302 IPC, as stated above. Challenging the said conviction and sentence, the sole accused is before this Court with this appeal.

11. The learned counsel appearing for the appellant/accused contended that there are lots of inconsistencies in the deposition of the prosecution witnesses and such inconsistencies would go to show that the prosecution has not proved the guilt of the accused beyond reasonable doubt. According to the learned counsel, the First Information Report under Ex.P-1 is not on the basis of the information received by the Police at the first instance, which is evident from the fact that even before Ex.P-1 came into existence, the Police came to the scene of occurrence. Thus, the investigation in this case did not commence on the basis of the complaint under Ex.P-1, rather, the Police were informed about the occurrence even prior to registration of Ex.P-1, thereby creating grave doubt with regard to the genesis of the prosecution case. In this regard, the learned counsel appearing for the appellant/accused submitted that though PW11-investigation officer has stated that he registered the first information report at 1.00 pm in the scene of occurrence, PW1 i.e., the complainant had admitted in his cross-examination that he went to Choolaimedu Police Station at 11.00 am itself and lodged the complaint under Ex.P1. This was also admitted by PW7, who is the son of PW1. It is also admitted by P.W.1 that he informed Choolaimedu Police Station over phone and he was enquired about the occurrence, his address, what happened and for what purpose he has informed over phone. In view of his categorical admission, the information given by P.W.1 to the Police Station should have been treated as FIR and any further statement made by P.W.1 is hit by Section 162 Cr.P.C. and in other words, Ex.P-1 is a further statement and not FIR. In this context, the learned counsel for the appellant placed reliance on the decision of the Supreme Court in the case of T.T. Antony Vs. State of Kerala and others, reported in 2001 (6) SCC 181, wherein it was held that after registration of first information report, any or all statements recorded, has to be construed as a statement falling under Section 162 of the Code of Criminal Procedure. In other words, such statements cannot be treated as First Information Report and entered into the Station House Diary again, as it would amount to a second First Information Report and it is contrary to the Code of Criminal Procedure. The above judgment relied on by the learned counsel for the appellant, was subsequently relied on by the Supreme Court in the decision reported in 2016 (10) SCC 537 (Bhagwan Jagannath Markad Vs. State of Maharashtra).

12. The learned counsel for the appellant/accused further submitted that the fact that the Police were there in the scene of crime even before P.W.1 had informed the Police and the admission made by P.W.1 in the cross-examination that the accused was taken by the Police by 11 am, would further fortify the defence of the appellant/accused that there was an earlier

complaint, which was suppressed. Thus, the complaint said to have been received from PW1 by P.W.11, investigating officer, is nothing but a further statement. Thus, it would further strengthen the defence of the accused. Further, as far as the receipt of Ex.P-1 complaint is concerned, P.W.11 in his evidence had stated that on the basis of the information received from the Control Room, he proceeded to the scene of occurrence, where P.W.1 had narrated the incident to him. He has further deposed that he had instructed the Police personnel to bring the FIR Register to the scene of occurrence and registered the case in Crime No.2962 of 2011. As already stated, it is contrary to the evidence of P.W.1, who had admitted in the cross-examination that he went to the Police Station by 11 a.m and lodged the complaint. P.W.11 also admitted in his evidence about the reference made in Ex.P-11 FIR with regard to the information he received while on Patrol duty from the Control Room. Therefore, the origin and genesis of the earlier complaint had been suppressed by the prosecution.

13. The learned counsel for the appellant also submitted that in Ex.P1, which was in Tamil, PW1 signed it in Tamil. However, Exs. P2 and P3 were signed by him and he had put his signature in English. This would only indicate that Exs.P1, P2 and P3 receipts issued by P.W.1, were not authored by PW1, as has been alleged by the prosecution. If all the signatures are compared by this Court as provided under Section 73 of the Indian Evidence Act, this Court will come to a definite conclusion that the same person is not the author of the abovesaid documents and the person who had signed Exs.P-1 to P-3, is not the person who had deposed as P.W.1 before the trial Court. Further, the learned counsel for the appellant submitted that neither in Ex.P-1 complaint, nor in his evidence, P.W.1 had mentioned the names of the eye-witnesses - P.Ws.2 to 4. Similarly, P.W.7 has also not deposed about the presence of the said eye-witnesses. Hence, the evidence of P.W.1 cannot be believed, as the presence of the said eye-witnesses in the place of occurrence is highly doubtful. In this regard, the learned counsel for the appellant relied on a decision of the Supreme Court reported in the case of (Bhimappa Jinnappa Naganur Vs. State of Karnataka) reported in 1993 SCC (Cri) 1053. Therefore, it has to be concluded that Ex.P1 did not come into existence in the manner as projected by the prosecution.

14. The learned counsel for the appellant also contended that the arrest of the accused in this case, has not been proved in the manner known to law. The arrest of the accused in this case is spoken to by P.Ws.1, 2, 3, 7 and 11. The said deposition of the aforesaid prosecution witnesses with respect to arrest of the accused, is contrary to each other. PW1 in his deposition has stated that on opening the Room No.306, he

saw the deceased lying dead and the Police Officers have taken custody of the accused, who was in the Room at about 11.00 am. P.W.2 has deposed that within 10 to 15 minutes from the time of occurrence, the Police came to the scene of occurrence. Similarly, P.W.3 has also deposed that as soon as the police were informed over phone, they came to the scene of occurrence and took the accused along with them and he saw the same. On the contrary, the photographs taken by PW6 in the scene of occurrence between 1 pm and 2 pm on 06.12.2011 also did not reveal the presence of the accused in Room No.306 or the scene of occurrence. P.W.7 has also stated in his evidence that the Police came to the scene of occurrence as soon as P.W.1 informed the Police over phone. After their arrival, they enquired the accused and took him along with them to the Choolaimedu Police Station. Whereas, contrarily, P.W.11 investigating officer deposed that the accused was arrested in the scene of occurrence only at about 4 p.m on the date of occurrence in the presence of P.W.5 and one Saravanan. The learned counsel for the appellant/accused further submitted that there are lots of inconsistencies in the matter of arrest of the accused from the scene of occurrence and in view of the same, the only inference that could be drawn is that the prosecution failed to place the actual materials before the trial Court.

15. The learned counsel for the appellant also contended that the clothes worn by the accused, were sent to Forensic Department for conducting chemical analysis under Ex.P24, in which they were shown as Item Nos.7 and 8. The Forensic Department conducted the chemical analysis and submitted a Biological report in Ex.P-25, in which, various recovered material objects were mentioned including item Nos.7 and 8 in Ex.P-24 (request by the Inspector of Police to send the case properties for chemical analysis/examination) being the clothes worn by the accused, wherein the blood is detected in all the material objects, except item No.2 mentioned therein. In Ex.P-27 report of the Forensic Sciences Department, it has been stated that the blood was found in the clothes of the accused as 'O' Group blood as well as in the items found in the scene of occurrence. So far as M.O.1 knife is concerned, the finding of the result of the group of blood is inconclusive. This is against the case of the prosecution. There is no finding as to the blood group of the accused and the deceased. The learned counsel for the appellant/accused further submitted that P.W.11 has stated in his evidence that he had collected M.Os.1, 6, 8 and 10, but while recovering the above articles, neither P.W.1 nor the mahazar witnesses had spoken about the sealing of the contents before they were despatched to the Serologist. In this regard, the learned counsel for the appellant/accused relied on the decision of the Supreme Court reported in the case of (Abuthugir and others Vs. State) reported in 2006 (1) LW (Cr1)

179 (SC), wherein it has been held as follows:

"36. In the course of investigation, after the arrest of A-2, A-3 and A-4, P.W.23 recovered, pursuant to the confession given by them, three shirts, which are M.Os.16, 15 & 4. When these shirts were subjected to chemical examination, and serological test, they revealed human 'O' Group blood stain in those shirts. The dresses recovered from the body of the deceased also would disclose, that his blood was 'O' Group. The knives recovered on the basis of the confession does not disclose human 'O' group blood, though it disclosed that they contained human blood. On the basis of the blood group in the dresses recovered, pursuant to the confession given by the accused, an attempt was made to show that because of the assault committed by these accused, the blood of the deceased would have stained in their dresses. Only on this basis, if the accused are to be convicted, then there must be clinching evidence that they were wearing M.Os.16, 15 & 4 at the time of the incident, which should have been spoken by P.Ws.5 & 6, who claimed that they have seen the accused. Unfortunately, these dresses were not shown to P.Ws.5 & 6 and in fact, they have also not identified. In fact, P.W.9 though had stated that the police have shown a shirt of the accused and enquired him, that shirt was also not identified by him as one worn by any one of the accused. Under the above said facts and circumstances of the case, when this is not connected with any other circumstances or by any material evidence, believing the serologist's report alone, convicting the accused may not be safe and in this view, this circumstance also deserves only rejection."

16. The learned counsel for the appellant further contended that P.W.11 also deposed that P.Ws.1 to 4 as well as P.W.7 did not state in their statement about the length of the knife allegedly used for the commission of the offence. Even PW11 did not record any statement from the Doctor concerned that the injuries found in the body of the deceased, might have been

caused with M.O.1 - knife. Moreover, P.W.11 investigating officer had admitted in his evidence that he has forwarded Ex.P-12 observation mahazar, Ex.P-15 Form 91 and the statement of the eye-witnesses only on 09.02.2012 along with the final report (charge-sheet). In this regard, the learned counsel for the appellant relied on the decision of a Division Bench of this Court in the case of (Abuthagir and others Vs. State) reported in 2006 (1) LW (Crl) 179 (cited supra) wherein it has been held as follows:-

"29. It is expected from the prosecution that the papers connecting the crime starting from F.I.R. should reach the Judicial Magistrate concerned without any delay as far as practicable. If any delay occasioned unavoidably, that alone should not cast cloud provided that delay is explained. As pointed out by the learned senior counsel, a Division Bench of this Court in Karunakaran Jabamani Nadar In re (1974 L.W. Crl. 190) held that the statements of witnesses recorded under Section 161(3) of Cr.P.C. having special importance they should be despatched by the Investigating Officer without any delay to the Magistrate and they should bear the initials of the Magistrate with reference to both the date and time of the receipt. Though Criminal Procedure Code does not prescribe any such guideline, it is declared by this Court, that the documents, which are coming within the meaning of special importance should reach the judicial authority in time, thereby preventing its challenge at later point of time as if concocted one utilizing the delay etc. to suit the convenience of the prosecution. If the important documents had reached the judicial hand, then it could be safely said that the averments contained in the documents came into existence at appropriate time, not utilising the delay, thereby it should be given its due weight and credence. This kind of safeguard was not made available to the statements of P.Ws.5 & 6, thereby creating a dark cloud upon their statements even compelling us to say that the statements might have been recorded at later point of time, fixing the accused even after identification."

17. Elaborating further, the learned counsel for the appellant states that the Form No.91 relating to finger prints recovered in the scene of occurrence, was marked as Ex.P21 and the finger print of the accused was taken on 06.12.2011. However, the report of the finger print in this regard has not been marked before the Court below to clinchingly prove that the finger print of the accused tallied with the one taken from the scene of occurrence. Thus, the learned counsel for the appellant/accused submitted that the report of the finger print expert has been deliberately with-held by the prosecution.

18. The learned counsel also contended that the case of the prosecution is that PW1 bolted the door of Room No.306 from outside. P.Ws.2, 3 and 7 also stated that PW1 bolted the door from outside. However, in the observation mahazar Ex.P12 and rough sketch Ex.P-13, there is no indication to show that PW11 has recorded the bolting of the door from outside. Further, PW11 in his evidence had deposed that he attempted to open the door and the door was locked from inside. PW11 never whispered that the door was locked from outside as spoken to by PW1, 2, 3 and 7. This is a fallacy in the evidence projected and it goes to the root of the case of the prosecution.

19. By drawing the attention of this Court to Ex.P-16 inquest report, it is stated by the learned counsel for the appellant that time was mentioned as 14.30 hours on 06.12.2011 at Room No.306, but the witness who signed the inquest report, was not examined by the prosecution. Further, in Ex.P16, reference was made that the dead body was sent for post-mortem at 2.30 pm on 06.12.2011. However, PW8 Police Constable deposed that he had given the dead body only on 09.12.2011 to the hospital for postmortem. On the other hand, PW9 Doctor has stated that on 06.12.2011 at 4.45 pm, PW8 brought the dead body for post-mortem. PW9 also deposed that he was not informed as to whether the deceased was done to death by known person or unknown person.

20. Referring to Ex.P-10 Post-mortem Certificate, it is stated that the death of the deceased, according to the prosecution, had occurred between 10.45 am and 11.00 am. In Ex.P-9 Accident Register, the time of death is recorded as 'around 12.30 pm'. P.W.10 Doctor who conducted post-mortem, examined the dead body at 4.45 pm on 06.12.2011 and around 6 pm the dead body was sent to the mortuary and kept in freezer room. It is the defence of the accused that the death of the deceased might have occurred on the night of 05.12.2011/06.12.2011 and not after 10.45 am on 06.12.2011, as alleged by the prosecution. P.W.10 Doctor who conducted post-mortem has deposed before the trial Court that Rigor Mortis would normally appear in a dead body within 2 to 6 hours of the death and it will start

appearing from the forehead till the leg portion and such rigor-mortis would loosen or extinguish after 36 hours of the death. In the post-mortem report, reference was made to the fact that there was a rigor-mortis in the leg portion. Further, post-mortem was done within 18 to 36 hours of the death of the deceased. If the post-mortem report is taken into account, rigor-mortis present in the lower limb of the deceased at the time of post-mortem, would only suggest that the death would not have occurred as projected by the prosecution and the deceased must have died 18 to 36 hours prior to the post-mortem. According to the learned counsel, by any stretch of imagination, the deceased could not have died between 10.45 am and 11.00 am on 06.12.2011, as projected by the prosecution.

21. Lastly, it is contended by the learned counsel for the appellant that there are interpolations in the arrest card and that is the reason why the prosecution had with-held the arrest card and it was also admitted by PW11. Further, there are several inconsistencies in the manner in which the investigation was conducted, the deposition of the prosecution witnesses and the material documents produced by the prosecution. If the materials placed on record are analysed, it would only suggest that the prosecution has failed to prove the case against the appellant beyond reasonable doubt. The learned counsel for the appellant therefore prays for allowing this appeal.

22. The learned Additional Public Prosecutor appearing for the respondent/State would vehemently oppose the appeal by contending that the prosecution has roped in witnesses to speak about the motive for the murder, the manner in which the murder had taken place and the presence of the accused in the place of occurrence with the material object viz., knife. It is her contention that PW1, 2, 3, 5 and 7 were present in the scene of occurrence and saw the accused inside Room No.306. PWs 2, 3 and 7 have seen the accused stabbing the deceased indiscriminately. In fact, PW1 is the one who had shown the room where deceased was staying and within few minutes, on being informed that there was a quarrel, he reached Room No.306 and locked the door from outside to ensure the accused should not escape. The Room was opened only after the Police officials reached the spot. The accused was thus caught red handed soon after the commission of offence. In other words, till the police reached the spot, the accused was sitting inside Room No.306 and only when Police asked to open the door, he came out of the Room. Therefore, the prosecution has clearly established the presence of the accused in the scene of occurrence. According to learned Additional Public Prosecutor, the contradictions pointed out by the learned counsel for the appellant are only minor contradictions, and even though there are minor inconsistencies in the deposition of

the prosecution witnesses, the same will not tumble the case of the prosecution in any manner. The learned Additional Public Prosecutor therefore submits that this is a case where the occurrence was witnessed by eye witnesses, namely PW2, 3 and 7 and they have also stood by their deposition in the cross-examination and nothing credible could be elicited from them to support the case of the defence. The trial court, on considering the above oral and documentary evidence, has rightly convicted the appellant and therefore, she prayed for dismissal of the appeal filed by the appellant.

23. We have heard the learned counsel for both sides and perused the materials placed on record. For the purpose of considering the rival claim, it is necessary to analyse the deposition of the prosecution witnesses to reach a just conclusion.

24. PW1 is the Manager of Vidya lodge, Choolaimedu, Chennai. According to PW1, the appellant as well as the deceased stayed in the lodge for monthly rent. While the deceased stayed in Room No.208, the appellant stayed in Room No.205. It is his version that four months prior to the occurrence, due to misunderstanding between the appellant and the deceased, a quarrel erupted between them. When this was brought to the notice of PW1 by the deceased, PW1 informed the appellant to vacate the Room and accordingly, he vacated the Room and stayed somewhere else. PW1 also shifted the deceased from Room No.208 to 306. According to PW1, on the fateful day, namely on 06.12.2011 at about 10.45 a.m., the accused came to the lodge and asked for the details of the Room where the deceased is staying. PW1 questioned the appellant as to why he wanted to meet the deceased, especially when there was difference of opinion between them. In reply, the appellant informed PW1 that there is no such difference of opinion between them and they have become friends. By saying so, the appellant went to the Room where the deceased was staying. But shortly thereafter, PW1 was informed by PW2, who is staying in Room No.304, that some quarrel was taking place in Room No.306 and asked PW1 to come there. PW1 has also added in his evidence that when the accused came to the lodge, he brought the petrol can along with him. He also heard the sound of the can falling. Immediately, PW1 went to the Room No.306 and at that time, the Room was locked from inside. When PW1 peeped through the window, he found the deceased lying in the ground with blood oozing out from his body, besides blood was splattered all over the wall. A blood stained knife was found on the bed. He also saw the accused inside the room. Immediately, PW1 locked the Room from outside and informed the Ambulance by dialling 100, besides informing the owner of the lodge, namely Velusamy. He also informed the Choolaimedu Police Station and the police

reached the spot at about 1.00 pm and went to Room No.306 and had taken custody of the accused from the said Room. Though PW1 in his chief-examination asserted that he has given the complaint to the police at the scene of occurrence at 1.00 pm, in his cross-examination, he has categorically admitted that he went to the police station at 11.00 am itself and lodged the complaint. However, PW1 in his cross-examination has stated that the complaint was written by Police and he signed it in the place of occurrence itself at 1 p.m. But in the cross-examination, he admitted that he went to the Police Station at 11 am itself and lodged the complaint. Further, P.W.1 has also admitted in his evidence that immediately after the occurrence, he had informed to Choolaimedu Police Station about the occurrence over phone and he was enquired about the occurrence, his address and what happened and for what purpose he has informed over phone. Therefore, the information given by P.W.1 cannot be cryptic message. In view of the categorical admission made by P.W.1 that he has informed the Choolaimedu Police Station over phone, the information given by P.W.1 to the Police Station should have been treated as FIR and any further statement made by P.W.1 is hit by Section 162 Cr.P.C. That apart, as observed earlier, P.W.1 has also stated that he went to the Police Station by 11 am and lodged the complaint. Therefore, it is clear that the earlier complaint had been suppressed. In this regard, it is useful to refer the following decisions of the Supreme Court relied on by the learned counsel for the appellant/accused:

(i) 2001 (6) SCC 181 (T.T.Antony Vs. State of Kerala):

"18. An information given under sub-section (1) of Section 154 CrPC is commonly known as first information report (FIR) though this term is not used in the Code. It is a very important document. And as its nickname suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law in motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 CrPC, as the case may be, and forwarding of a police report under Section 173 CrPC. It is quite possible and it happens not infrequently that more informations than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 CrPC.

Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the first information report -- FIR postulated by Section 154 CrPC. All other informations made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the first information report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 CrPC. No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of CrPC."

(ii) 1994 (2) SCC 685: (Ramsinh Bavaji Jadeja Vs. State of Gujarat):

"7. From time to time, controversy has been raised, as to at what stage the investigation commences. That has to be considered and examined on the facts of each case, especially, when the information of a cognizable offence has been given on telephone. If the telephonic message is cryptic in nature and the officer in charge, proceeds to the place of occurrence on basis of that information to find out the details of the nature of the offence itself, then it cannot be said that the information, which had been received by him on telephone, shall be deemed to be first information report. The object and purpose of giving such telephonic message is not to lodge the first information report, but to request the officer in charge of the police station to reach the place of occurrence. On the other hand, if the information given on telephone is not cryptic and on the basis of that information, the officer in charge, is prima facie satisfied about the commission of a cognizable offence and he proceeds from the police station after recording such information, to investigate such offence then any statement made by any person in respect of the said offence including details about the participants, shall be deemed to be a statement made by a person to the police officer "in the course of an investigation", covered by

Section 162 of the Code. That statement cannot be treated as first information report. But any telephonic information about commission of a cognizable offence irrespective of the nature and details of such information cannot be treated as first information report "

25. The above judgments squarely apply to the facts of the present case. Even in the present case, as observed earlier, P.W.1 has admitted that he has informed Choolaimedu Police Station over phone and he was enquired about the occurrence, his address, what happened and for what purpose, he had informed over phone. Therefore, the details were collected from P.W.1. Further, P.W.1 had himself has stated that he went to Choolaimedu Police Station at 11 a.m. on the fateful day, i.e. on 06.12.2011, immediately after the occurrence. That apart, P.W.11 has also admitted in his cross examination that the Police reached the place of occurrence at 11 a.m. and took the accused along with them. Therefore, it is clear that there was an earlier complaint. The subsequent statement said to have been given by P.W.1 in the scene of occurrence had to be treated only as the further statement and it is hit by Section 162 Cr.P.C. Hence, on the suppression of the earlier complaint, the prosecution case fails.

26. PW11 is the officer who investigated the case. In his deposition, he has stated that he received information from the Control Room and proceeded to the scene of occurrence. On examination of the Room bearing Door No.306, he has noticed that it was locked from inside. When PW11 peeped through the window, he saw the accused sitting inside the Room with a blood stained knife and that the deceased was lying in the ground with stab injuries. On his direction, the accused opened the door and he was taken into custody. He proceeded to depose that he informed the Choolaimedu Police Station about the incident and on his direction, the first information report register was brought to the scene of occurrence. He has also intimated the finger print expert and photographer and on such intimation, they reached the scene of occurrence. He also deposed that he received the complaint, Ex.P1 from PW1 and registered a case in Crime No. 2962 of 2011 in the scene of occurrence itself. In his chief-examination, he has deposed that at about 4.00 pm in the evening, after completing the inquest report, he recorded the confession statement of the accused and also recovered the material objects in the case. In the cross-examination of PW11, he admitted that on the basis of information received by him from the Control Room, he reached the scene of occurrence. He has also admitted that there was no date mentioned in the complaint under Ex.P1 and that there are certain interpolations in the FIR with respect to the time at which the complaint was

given. P.W.11 further stated in the cross-examination that he received the complaint under Ex.P1 from PW1, but he was not aware as to who had written the complaint. He has also admitted that there is overwriting in the confession statement recorded from the accused as well as Ex.P-16, inquest report with respect to the time at which they were recorded.

27. On careful scanning of the deposition of the prosecution witness, we find that there are lots of mismatch and inconsistencies in the time at which the occurrence had taken place, the time of arrival of the police personnel to the scene of occurrence and the time at which the accused was arrested. In Ex.P1, complaint, PW1 has stated that at about 11.00 am he received an intercom from PW2 that there is a commotion and/or quarrel in Room No.306 and therefore, he went there. According to PW1, he saw the deceased lying in a pool of blood while the accused was inside the Room with a knife. He also stated that he raised an alarm and on hearing the same, the other occupants of the Room have assembled in front of Room No.306. It is his further version in the complaint that the accused started stabbing the deceased indiscriminately. It is not clear as to whether PW1 has in fact witnessed the appellant stabbing the deceased. In the former portion of the complaint, he has stated that he saw the deceased lying with stab injuries. In quick succession, in the next two lines, he has stated that the appellant started stabbing the deceased indiscriminately. Similar is the version of PW2, 3 and 7 who have stated to have seen the appellant stabbing the deceased indiscriminately and demanded the accused to open the door. Therefore, it is really doubtful as to whether P.Ws.2, 3 and 7 would have witnessed the occurrence especially when the names of PWs 2, 3 and 7 were not mentioned by PW1 either in his complaint or in his evidence.

28. Further, Ex.P1 was registered at about 13.00 hours. In Ex.P1, PW1 has signed in Tamil as "Ganesan", whereas, in Exs. P2 and P3, receipts issued by PW1, he has signed his name in English as "P. Ganesan". When confronted in the cross-examination, PW1 has stated that he used to sign both in English and Tamil. This casts a cloud in the manner in which the complaint, Ex.P1 was signed by PW1 or whether it was PW1 who has given the complaint in the manner projected by the prosecution. However, even before the complaint was given by PW1, police have admittedly reached the scene of occurrence, arrested the accused and removed the dead body. The complaint, Ex.P1 came much later. Even here, there is discrepancy with respect to the place where the complaint was given by PW1. PW1, at one portion of his deposition says that the complaint was written by the Police at the scene of occurrence and he merely signed it. In other portion of his deposition, he has stated that he has given the complaint at Choolaimedu Police Station at 11 a.m.

Therefore, there is a clear discrepancy with respect to the time at which the Police reached the scene of occurrence and the place where Ex.P1 complaint was given by PW1.

29. Even though P.Ws.1, 2, 3 and 7 have stated that they have seen the accused stabbing the deceased in Room No.306 and they shouted to open the door, P.Ws.2, 3 and 7 could not identify the accused properly. They could not even say the attire worn by the accused at the time of the alleged commission of offence. They could not disclose or describe the personal particulars of the accused as well. Moreover, P.W.1 neither in his evidence, nor in his complaint, had mentioned the names of the eye-witnesses. Similarly, P.W.3 had also deposed that immediately, the Police was informed and he saw the Police coming to the scene of occurrence and taking the accused with them. It appears that the prosecution would have implanted P.Ws.1, 2, 3 and 7 as eye-witnesses and it is highly doubtful as to whether they have really witnessed the occurrence. Further, PW6 Photographer, who reached the scene of occurrence, had taken several photographs, but in none of them, there is any co-relation to show that those photographs were taken only in Room No.306. In none of the photographs, the accused could be seen. Even according to PW6 photographer, he reached the scene of occurrence viz., Room No. 306 at 1.00 pm. If really the accused was present inside Room No.306 till 4.00 pm, the photographs taken must have the accused present in one of the photographs especially when PW11 says that he arrested the accused at 4.00 pm in the scene of occurrence. This is one of the fallacies in the manner in which the prosecution was conducted and this creates a doubt in the case of the prosecution.

30. P.W.11 is the officer who investigated this case. He had deposed that based on the information received from the Control Room, he reached the scene of occurrence, arrested the accused from Room No.306 and recorded his confession statement in the scene of crime itself in the presence of witnesses. As regards the complaint, according to PW11, he had instructed his subordinates to bring the FIR records and registered the case in Crime No.2962 of 2011 in the scene of occurrence itself. On the contrary, as mentioned above, PW1 says that the complaint was written and signed by him in the scene of occurrence itself. However, in the cross examination, he has deposed that he went to Choolaimedu Police Station at 11 am., where he has given the complaint. In his cross-examination, P.W.11 did not explain the reason for registering the case in the scene of occurrence itself by directing his subordinates to bring the FIR book. This is a procedure unheard of in the criminal law jurisprudence. In this context, in an identical case, the Supreme Court in the decision reported in 2001 (6) SCC 181

(cited supra) held that we have never come across a case where a Station House Officer has taken the first information book with him to the scene of occurrence. In the above circumstances, we think that there is great force in the submission of the learned counsel for the accused that the original FIR had been suppressed and in its place, some other document had been substituted. In the present case also, there is no strong reason or explanation forthcoming from PW11 as to why he has to direct his subordinates to bring the first information book to the scene of occurrence. This is yet another inconsistency in the manner in which the prosecution has projected its case. Similarly, it is also doubtful whether P.Ws.2, 3 and 7 have witnessed the occurrence. Moreover, P.W.11 investigating officer had admitted in his evidence that he has forwarded Ex.P-12 observation mahazar, Ex.P-15 Form 91 and the statement of the eye-witnesses only on 09.02.2012 along with the final report (charge-sheet). The occurrence took place on 06.12.2011. This delay has not been properly explained by the prosecution. In this regard, as relied on by the learned counsel for the appellant, a reference could be placed to the decision reported in 2006 (1) LW (Cr1) 179 (cited supra) and 1974 LW (Cr1) 190 (cited supra). Thus, this delay would show that the statement of the witnesses would not have been recorded in the scene of occurrence and had it been recorded in the scene of occurrence, the same would have been despatched immediately. Further, taking into consideration the evidence of PW11, we see that there is a gross discrepancy and contradiction with regard to registration of the first information report. PW1 admitted that he went to Choolaimedu Police Station and had given the complaint at 11.00 am. But PW11 deposed that he directed his subordinates to bring the first information report register to the scene of occurrence itself, received the complaint from PW1 and registered the first information report in the scene of occurrence. This grave contradiction with regard to the registration of first information report coupled with the fact that statement recorded from the witness and other documents have been sent to the Court with delay of two months would give rise to a clear inference that the statement of the witnesses have been prepared to suit the convenience of the prosecution at a later point of time. This creates a doubt about the presence of the eye-witnesses in the scene of occurrence.

31. The learned counsel for the appellant placed much reliance on the deposition of P.W.10 Post-mortem Doctor, with respect to the presence of rigor-mortis setting in the legs of the deceased. According to the learned counsel, PW10 was also cross-examined with respect to presence of rigor-mortis in the legs and the deposition of PW10 would only indicate that the death has not occurred as projected by the prosecution, but much earlier. We find force in such submission of the counsel for

the appellant. This conclusion of ours is also supported by the fact that PW11 himself admitted that there is an over-writing in the confession statement recorded from the accused as well as Ex.P16, inquest report with respect to the time at which they were recorded. Similarly, PW8 Doctor, who issued Accident Register, has admitted in his cross-examination that he did not record in the Accident Register as to whether the deceased was murdered by any known or unknown person. These inconsistencies, in our view, would only give rise to an inference that the prosecution has not proved its case "beyond reasonable doubt and that the accused must be given the "benefit of doubt".

32. In the result, the Judgment of conviction and sentence, dated 02.03.2018 passed in S.C. No. 97 of 2012 on the file of the VI Additional Sessions Judge, Chennai is set aside. The Criminal Appeal is allowed. The appellant/accused is acquitted of the charge. He is directed to be set at liberty forthwith, unless he is required in connection with any other case. The bail bond(s) if any, executed by him, shall stand cancelled. The fine amount, if paid by him, shall be refunded.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rsh/cs

To

1. The VI Additional Sessions Judge, Chennai.
2. The Inspector of Police (L & O),
F-5 Choolaimedu Police Station,
Chennai-600 094. (Cr.No.2962 of 2011)
3. The Public Prosecutor, High Court, Madras.
4. The Principal Sessions Judge, Chennai.
5. The XVII Metropolitan Magistrate, Saidapet, Chennai.
6. The Chief Metropolitan Magistrate, Egmore, Chennai.
7. The District General of Police,
Mylapore, Chennai.
8. The Superintendent,
Central Prison, Puzhal, Chennai.

Cr1.A.No.286 of 2018

SJ(CO)
CS/20/07/2020