



BAIL SLIP

1.Sudalai @ Suthakar, S/o. Chellappa, Male, aged about 23 years/2018(Accused No.2), 2. Ayyappan, S/o.Subbiah Thevar, Male, aged about 25 years/2018 (Accused No.1) were released on bail vide Court order dated 09.04.2018 and 11.04.2018 made in CRL MP(MD) Nos.2037 and 1166 of 2018 in CRL A(MD)Nos. 54 and 81 of 2018 respectively.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.12.2019

Pronounced on : 09.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE **T.RAJA**

AND

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

Crl.A.(MD) Nos.54 and 81 of 2018

Sudalai @ Suthakar ... Appellant in Crl.A.(MD).No.54/2018/A2

Ayyappan ... Appellant in Crl.A.(MD).No.81/2018/A1

vs.

State by,
The Inspector of Police,
Thisayanvilai Police Station,
Tirunelveli District.

(Crime No.333/2014) ... Respondent in both Crl.Appeals/
Complainant

Criminal appeals preferred under Section 374(2) of Cr.P.C., against the judgement of conviction and sentence dated 17.01.2018 passed by the learned III Additional Sessions Judge, Tirunelveli, in S.C.No.68 of 2016.

For Appellants : Mr.V.Kathirvelu,
Senior Counsel in Crl.A.MD.No.54/2018
for Mr.K. Prabhu
Mr.Niranjan S. Kumar,
Counsel in Crl.A.MD.No.81/2018

For Respondent : Mr.R.Anandraj, Addl.P.P.
in both Crl.As.



COMMON JUDGMENT

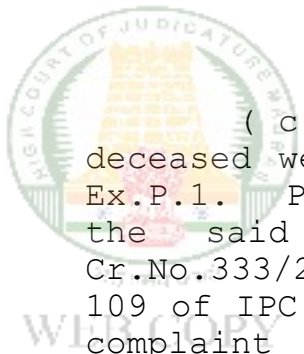
(Judgement of the Court was delivered by **T.RAJA, J.**)

The appellants are the accused 2 and 1 respectively in Sessions Case No.68 of 2016, on the file of the learned III Additional Sessions Judge, Tirunelveli. There were totally three accused in this case. The accused 1 and 2 stood charged for the offences under Sections 341 and 302 IPC and the 3rd accused stood charged only for an offence under Section 302 read with Section 34 IPC. By judgement dated 17.01.2018, the trial Court convicted the appellants herein alone/accused 1 and 2 under sections 341 and 302 of IPC and accordingly sentenced them to undergo one month simple imprisonment for the offence under Section 341 of IPC and also sentenced to undergo life imprisonment and to pay a fine of Rs.5000/- each, in default, to undergo rigorous imprisonment for six months for the offence under Section 302 IPC and acquitted the third accused from the charge under Section 302 read with 34 of IPC. Challenging the said conviction and sentence, the appellants herein/accused 1 and 2 are before this Court with these Criminal Appeals.

2.The case of the prosecution in brief is as follows:

(a) P.W.1 Selvi is the wife of the deceased Perumal who was running a hotel in the building owned by one Palanisankar at Thisayanvilai Police Transport Employees Guest House. She used to cook and take it to the hotel from her house. Due to previous enmity, four days prior to the incident, the 1st and 3rd accused came to the hotel of the deceased and threatened him with dire consequences that they would do away from him and the deceased also informed the same to his wife P.W.1.

(b) While so, on 3.11.2014 at about 6.00 p.m., the deceased had come to his house and taken Sambar to the hotel and P.W.1 and her brother P.W.2 Balasubramanian, who had come to their house, followed the deceased by taking Satney and Kuruma in a bucket. At that time, at the instigation of the 3rd accused Subbiah Thevar, when they were nearing Selva Sundara Vinayagar Koil Street, in Pound Street Corner, the appellants herein came there and restrained the deceased and pushed him down who fell down in front of Eswaran Chettiyar house. Suddenly, the appellants herein cut the deceased with aruvals repeatedly. The deceased raised alarm and tried to prevent him from the said attack. Though P.W.2 tried to catch the accused 1 and 2/appellants herein, the 1st accused pushed him away and both the accused fled away from the scene of occurrence. The said occurrence was witnessed by P.W.3 Pitchammal. P.W.1 and P.W.2, thereafter, took the deceased in a trekker of Muthukumar P.W.10 to Tirunelveli Government Medical College Hospital wherein the deceased was declared dead by P.W.21 Dr.Asmi.



(c) On 04.11.2014 around 6.00 a.m., P.W.1, wife of the deceased went to Thisayanvilai Police Station and gave a complaint Ex.P.1. P.W.18 Mr.Balakrishnan, Sub-Inspector of Police, received the said complaint and registered an F.I.R. Ex.P.12 in Cr.No.333/2014 for the offences under Sections 341, 302 read with 109 of IPC. P.W.15 Maharajan, Grade I Constable 827, submitted the complaint along with the Express F.I.R. to the learned Judicial Magistrate, Cheranmahadevi, who was in charge of Nanguneri Judicial Magistrate Court.

(d) The case was taken up for investigation by P.W.19 Mr.Sankareswaran -the Inspector of Police. He went to the Place of occurrence and prepared an observation mahazar Ex.P.2 and a rough sketch Ex.P.13 at 8.00 a.m., in the presence of P.W.9 Kasinathan and a witness Sundarapandi. He also recovered the blood stained earth (M.O.7) and sample earth (M.O.8) under Seizure Mahazar Ex.P.3 in the presence of the same witnesses and also examined other witnesses, namely, P.W.1 Selvi, P.W.2 Balasubramanian, P.W.3 Pitchammal and P.W.4 Vasantha. He, after holding inquest on the body of the deceased in the presence of Panchayatdars, prepared Ex.P.14 Inquest Report. Thereafter, he forwarded the same for post-mortem through requisition Ex.P.11. P.W.11 Mr.Arivalagan, Grade I Police Constable handed over the body of the deceased for post-mortem.

(e) P.W.17-Dr.Mohamed Thajudeen conducted autopsy on the body of the deceased on 04.11.2014 at 1.40 p.m. He found the following injuries.

1. An oblique gaping heavy cut injury of size 8x1x1 cm. Over middle of forehead. It cuts underlying soft issues;
2. An oblique gaping heavy cut injury of size 7x3x1 c.m. Over top of head. It cuts underlying scalp;
3. A horizontal sapping heavy cut injury of size 10x2 c.m. X cavity deep over left side of head. It lies 4 c.m. Above left ear. It cuts underlying skull, duramater and brain;
4. A horizontal gaping heavy cut injury of size 10x2 c.m. X cavity deep over left side of head. It lies 1 c.m. below injury No.3. It cuts underlying skull, duramater and brain;
5. An oblique sapping heavy cut injury of size 4 x 2 x 2 c.m. Over left side of back of head. It lies 1 c.m. Below and right to injury No.4. It cuts underlying scalp;
6. An oblique gaping heavy cut injury of size 11 x 2 c.m. X cavity deep over left side of back of head. It lies 1 c.m. Below injury No.5. It cuts underlying skull, duramater and brain;
7. An oblique sapping heavy cut injury of size 6 x 1 x 1 c.m. Over left side of back of head. It lies 1 c.m. Below injury No.6. It cuts underlying scalp;
8. An oblique sapping heavy cut injury of size 4 x 1 x 1 c.m. Over left side of back of head. It lies 1 c.m. Below and right to injury No.7. It cuts underlying scalp;



9. An oblique sapping heavy cut injury of size 11 x 1 x 1 c.m. Over back of head. It lies 2 c.m. Below injury No.8. It cuts underlying scalp;

10. An oblique gaping heavy cut injury of size 20 x 4 x 7 c.m. over back of neck. It lies 1 c.m. Below to injury No.9. It cuts underlying soft tissues, third cervical vertebra and spinal cord;

11. An oblique gaping heavy cut injury of size 5 x 1 x 1 c.m. Over back of neck. It lies 2 c.m. Below injury No.10. It cuts underlying soft tissues;

12. An oblique gaping heavy cut injury of size 5 x 3 x 1 c.m. Over right side of cheek. It lies 2 c.m. Below right ear. It cuts underlying soft tissues;

13. An oblique gaping heavy cut injury of size 7 x 2 x 2 c.m. Over right side of back of chest. It lies 13 c.m. From right shoulder. It cuts underlying soft tissues;

14. An oblique sapping heavy cut injury of size 8 x 4 x 3 c.m. Over inner aspect of right hand. It cuts underlying soft tissues and metacarpal bones;

15. A vertical gaping heavy cut injury of size 13 x 5 x 4 c.m. Over left shoulder. It cuts underlying soft tissues and scapula bone;

16. Linear scratch abrasion of length 5 c.m. Over right side of back of chest;

17. Linear scratch abrasion of length 5 c.m. Over left side of back of chest; and

18. Abrasion of size 5 x 2 c.m. Over right knee; and

On dissection of head, Subarachnoid haemorrhage seen over left temporo parietal lobes with cut injuries He opined that the injuries No.3, 4, 6 and 10 could have caused the instant death of the deceased. Ex.P.10 is the post-mortem certificate.

(f) After post-mortem P.W.11 Mr.Arivalagan, Garde I Police Constable, handed over M.O.3 Lungi, M.O.4 Shirt, M.O.5 the inner wear of the deceased to P.W.19 Inspector of Police. In the meanwhile, the 3rd accused Subbiah Thevar surrendered before the court and P.W.19 took him into police custody on 19.11.2014 and he made a voluntary confession on 20.11.2014 at 3.00 p.m., in the presence of P.W.13 Easski Muthu and P.W.14 Muthukumar.

(g) The investigation was thereafter continued by his successor-P.W.20 Mr.Stephen GR Jose. He arrested the appellants herein/accused 1 and 2 on 5.12.2014 at 8.00 a.m. at Nanthankulam Junction. On their arrest, the 1st accused gave a confession statement in the presence of P.W.12 Selvakumar, Village Administrative Officer and one Mr.James, Village Assistant. On the basis of the admissible portion of his confession statement (Ex.P.8), P.W.20 seized Aruvals M.O.1 and M.O.2 which were used for the commission of the offence under Ex.P.9 Seizure Mahazar. He collected the medical records. At his request, the material objects

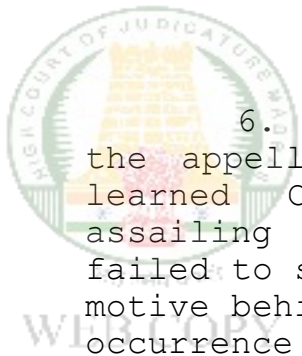


were sent for chemical examination, which revealed that there were human blood stains found on the material objects. On completing the investigation, he laid charge-sheet against the accused.

3. Based on the above materials, the trial Court framed charges against the accused, as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution as many as 22 witnesses were examined, 15 documents and 8 material objects were marked. Out of the said witnesses P.Ws.1 to 4 are the eyewitnesses to the occurrence. Except P.W.4, the other eyewitnesses have spoken about the occurrence and P.W.4 has turned hostile as she has not supported the case of the prosecution. P.W.5 Anupriya is the daughter of the deceased Perumal and P.W.1. She has deposed that after hearing the alarm, she along with his brother rushed to the scene of occurrence. P.W.9 Kasinathan has spoken about the preparation of the observation mahazar and rough sketch and the recovery of some of the material objects from the place of occurrence. P.W.10 Muthukumar is the Head Clerk of the Judicial Magistrate-cum-District Munsif Court, Nanguneri, who received the material objects under Form-90. P.W.11, Mr.Arivalagan, Grade-I P.C., has spoken about the fact that he took the dead body to Tirunelveli Government Medical College Hospital and handed over the same to the Doctor for post-mortem, as directed by the Investigating Officer. P.W.12 Village Administrative Officer has spoken about the arrest of the accused 1 and 2 and the confession statement given by the 1st accused. P.W.15 has spoken about the fact that he handed over the FIR to the Magistrate concerned. P.W.16 Muthukumar has spoken about taking the deceased and his wife P.W.1, and P.W.2 in his trekker to the Government Medical College Hospital, Tirunelveli. P.W.17 has spoken about the post-mortem conducted. P.Ws.18 and 19 have spoken about the investigation done and the final report filed. P.Ws.6 to 8, 13 and 14 have turned hostile as they have not supported the case of the prosecution.

4. When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness nor mark any document on their side. Having considered all the above, the trial Court convicted the appellants for the offences under Sections 341 and 302 of IPC. and sentenced them to undergo imprisonment as stated supra. Aggrieved over the same, the present Criminal Appeals have been filed.

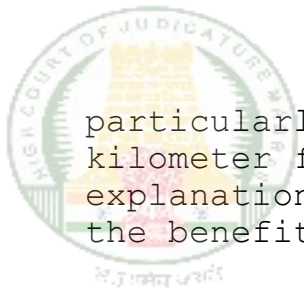
5. We have heard Mr.V.Kathirvelu, learned Senior Counsel appearing for the appellant in Crl.A.(MD).No.54/2018 and Mr.Niranjan S. Kumar, learned Counsel for the appellant in Crl.A.(MD).No.81/2018 and Mr.R.Anandraj, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.



6. Mr.V.Kathirvelu, learned Senior Counsel appearing for the appellant in Crl.A.(MD).No.54/2018 and Mr.Niranjana S. Kumar, learned Counsel for the appellant in Crl.A.(MD).No.81/2018 assailing the impugned judgment argued that the trial court has failed to see that the prosecution has miserably failed to prove the motive behind the alleged murder, more importantly, when the alleged occurrence had happened on 03.11.2014 at about 6.00 p.m., just within half a kilometer of a police station, the F.I.R. was registered only on the next day at 6.00 a.m. on 04.11.2014. The delay of 12 hours in lodging the complaint was neither explained by the prosecution nor by the Investigating Officer, besides there is no corroboration regarding the explanation for the delay. Under such circumstances, the Apex Court has repeatedly reiterated the importance of registering the First Information Report without delay holding that the delay has to be properly explained, if there is a delay and if not, the theory let in by the prosecution could only be a cooked story and adverse inference could only be drawn in favour of the accused. Therefore, on this sole ground, the trial court having seen that the place of occurrence even as per the evidence of P.W.19, the Investigating Officer, is around half-a-kilometer from the police station, whereas when the occurrence had taken place on 03.11.2014 at 6.00 p.m., the complaint has been lodged only on 04.11.2014 at 6.00 a.m. in the morning, ought to have rejected the case of the prosecution by extending the benefit of doubt to the appellants.

7. Learned Counsels for the appellants further argued that moreover, when the defacto complainant, P.W.1 wife of the deceased and that of P.W.2 brother of P.W.1 had so categorically deposed that the police were also present soon after the occurrence in the scene of occurrence, it is quite astonishing and amazing because when a murder has been taken place almost in a vicinity, they have been trained enough to act on the said situation. When it is the bounden duty of the police to safeguard law and order situation, registering F.I.R. by the police after 12.00 hours clearly shows that the deceased was assaulted elsewhere and came to the alleged place of occurrence only after the occurrence and none had witnessed the occurrence and that there was a delay in lodging the F.I.R.

8. Learned Counsels for the appellants also argued that there is no dispute over the death of Perumal, who according to the defence was running a hotel. Further, he belongs to DMK Party and also in the habit of criticizing and contemning the leaders of other political parties and thereby irked the members of the opposite parties, as a result, the deceased had developed enmity with many people. Therefore, the defence has placed their case that the deceased was assaulted elsewhere and came to the alleged place of occurrence with injuries and none had witnessed the occurrence and that there was an undue delay in registering the F.I.R., more



particularly, when the police station is situated within half a kilometer from the place of occurrence. Therefore, when there is no explanation whatsoever placed, the trial court ought to have given the benefit of acquittal to the appellants herein.

9. Moreover, according to the learned Counsel for the appellants, there are many contradictions between the evidences of prosecution witnesses Nos.1 and 2 and the Investigating Officer, while narrating the motive behind the alleged occurrence. When P.W.1 has narrated in her chief examination regarding motive on three occasions, none of the motive has been proved before the trial court, therefore, the trial court ought to have acquitted the appellants. Yet another vital plea that was not considered by the trial court is that the presence of P.W.2 being the brother-in-law of the deceased as an eye-witness at the scene of occurrence is doubtful. Normally, when a person gets injured or attacked with deadly weapons it would be a common knowledge for anyone to carry the victim, atleast till the ambulance or any other vehicle to carry to the nearest hospital. In the instant case, when P.W.2 was present in the scene of occurrence, being the brother-in-law, he could have carried the deceased to the hospital. If such activities were done at the scene of occurrence, the blood stains would have been found in his shirt. But the prosecution or the Investigating Officer has not taken any steps to prove his presence by recovering his clothes. It is further argued that moreover, when the Investigating Officer has also deposed before the trial court that he had seen some blood stains in the sari worn by the deceased wife P.W.1 and also in the dress of the brother-in-law of the deceased P.W.2 respectively and he had admitted that he had not thought it to recover the same as a piece of evidence to substantiate the presence of P.W.1 and P.W.2 at the place of occurrence. Therefore, the theory placed before the trial court that in the presence of P.W.1 and P.W.2, the deceased was murdered by the accused cannot be accepted at all.

10. While coming to the failure on the part of the prosecution to prove the weapons alleged to have been used at the time of murder, the learned Counsels for the appellants pleaded that even as per the version of P.W.1, two Aruvals were used to commit the offence of murder, but both of them were of different sizes. However, the Investigating Officer firmly denied the same. The most important aspect that the report of the Forensic Sciences Department explicitly denying the blood stains in the sickle does not tally with each other that shows that the prosecution has miserably failed to prove whether the said Aruvals were used for committing murder of the deceased as per Section 27 of the Indian Evidence Act. Even as per the case of the prosecution, since the occurrence had taken place when the deceased was returning to hotel carrying Sambar bucket and P.W.2 was carrying Satni bucket, the prosecution has not recovered any buckets at the scene of occurrence. Therefore, it is crystal clear that the Investigating

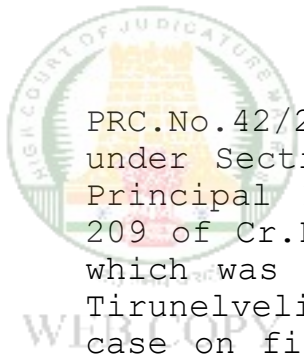


Officer has clearly cooked up a story and got up the appellants as accused and wrongly narrated the scene of occurrence which has actually not taken place. Therefore, the findings and conclusions reached by the learned trial court cannot be put against the appellants for recording conviction against them.

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11. Opposing the above argument, the learned Additional Public Prosecutor appearing for the respondent State stated that Perumal was a resident of Selvamaruthur and was running a hotel in Thisayanvilai. The 1st accused Ayyappan is the son of the 3rd accused Subbiah Thevar and the 2nd accused Sudalai @ Suthakar is the friend of the 1st accused Ayyappan. The accused 1 and 3 were in possession of Senthil Arumugam's property which is situated on the back side of their house. The deceased Perumal intended to buy the said property. The accused 1 and 3 warned Perumal from purchasing the said property. One Ponni who is a tenant in the house of the deceased quarrelled with the wife of the 3rd accused seven months before the incident. In the said quarrel, Perumal supported Ponni. On 30.10.2014, the accused 1 and 3 went to the hotel run by the deceased and threatened him stating that he would one day die only on their hands. When the matter stood thus, on 03.11.2014 at 6.00 p.m., the deceased along with his wife P.W.1 Selvai and her brother P.W.2 Balasubramanian left the house of the deceased towards the hotel by carrying sambar and satney in a bucket and the deceased was going by bicycle. When they came near the corner of Selva Sundara Vinayagar Kovil Street in front of the house of one Vairamuthu, the 3rd accused instigated the appellants herein/accused 1 and 2 to murder Perumal. Accordingly, the appellants herein restrained the deceased and pushed him down. Immediately, the 1st accused intentionally started cutting the deceased with Aruval and caused injuries on the middle of his fore head, top of forehead, backside of his neck, right side of his neck and the 2nd accused also intentionally started cutting Perumal with aruval on the left side of back of his head, right side back, chest, inner aspect of right hand and over his left shoulder. Then P.Ws.1 to 4 shouted not to cut Perumal. However, the accused left the place of occurrence towards the western side with Aruvals. Immediately, the deceased was taken to Tirunelveli Government Medical College Hospital where he was declared dead by P.W.21 Dr.Asmi.

12. The learned Additional Public Prosecutor further submitted that thereafter, P.W.1 went to the Police Station on 04.11.2014 around 6.00 a.m. and lodged a complaint based on which a case in Cr.No.333/2014 under Sections 341, 302 read with 109 IPC was registered and the Express FIR was submitted to the learned Judicial Magistrate, Cheranmahadevi, who was in charge of Nanguneri Court. Then, P.W.19 Investigating Officer took up the matter for investigation and on completion of the investigation, he filed a final report before the learned District Munsif-cum-Judicial Magistrate, Nanguneri, who took cognizance of the same in

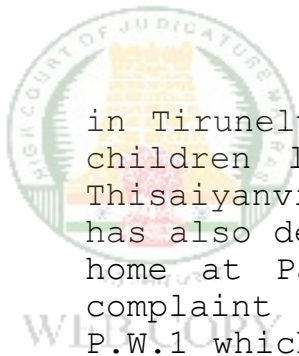


PRC.No.42/2015 and after furnishing copies to the accused persons under Section 207 of Cr.P.C., he committed the case to the learned Principal District and Sessions Judge, Tirunelveli as per Section 209 of Cr.P.C. as the case is exclusively triable by Sessions Court which was made over to the learned III Additional Sessions Court, Tirunelveli. The learned III Additional Sessions Judge took up the case on file in S.C.No.68/2016 and after framing charges and after fullfledged trial by examining 22 witnesses and marking 15 documents and 8 material objects on the side of the prosecution and non-examination of any witness on the side of the defence, found that the appellants herein guilty of the charges under Sections 341 and 302 of IPC and accordingly, convicted and sentenced them to undergo imprisonment as extracted above. Therefore, there is no infirmity in the judgment of conviction passed by the trial court. Hence, the present appeals are liable to be dismissed.

13. Now the point that arises for consideration is whether the appellants are only the real perpetrators of the crime?

14 . Firstly, coming to the motive aspect, as per the version of the learned Additional Public Prosecutor, the prosecution has proved the occurrence place in front of Easwaran Chettiyar's house and near the corner of Selva Sundara Vinayagar Koil Street by the evidence of P.W.1, P.W.2 and P.W.16 and the blood stains found in the soil taken in front of Eswaran Chettiar's house. The motive for the occurrence is the confrontation over taking of water from public tap by the tenants of the deceased, namely, P.W.6 and P.W.7 and merely because they turned hostile, the alleged motive cannot be doubted and rejected. Yet another motive was also placed because the appellants herein that four days prior to the day of occurrence, the 1st accused along with the 3rd accused had gone to the deceased hotel and threatened him which was spoken clearly by P.W.1 and P.W.5. Further, the next motive was also explained that the 1st accused had brandished the knife near the neck of the son of the deceased threatening them to depart the village which could be seen from Ex.P.1 complaint. Therefore, the trial court has rightly come to a conclusion that the motive has been proved by the evidences of eye-witnesses. Therefore, it is not open to the appellants to say that the motive was not established by the prosecution.

15. Secondly, coming to the delay in lodging the First Information Report, according to the learned Additional Public Prosecutor, the learned trial court justly opened with a prelude casting aspersions on the conduct of the respondent police in not registering the case when the scene of occurrence is located within 500 meters from the police station and expressed its anguish. Though the learned trial court has stated that Ex.P.1 does not disclose the cause for the delay, it has appreciated the evidence of P.W.1 wife of the deceased who deposed that since they apprehend danger to their life after her husband was declared dead by the Doctor P.W.21

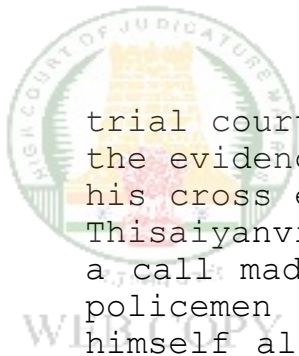


in Tirunelveli Government Medical College Hospital, she and her two children left her father's house at Pazhavur and then came to Thisaiyanvilai on the next day morning to give a complaint. P.W.2 has also deposed that he took his sister and her two children to his home at Pazhavur. After coming from Pazhavur, she has given a complaint to P.W.15 in the next day morning. The said evidence of P.W.1 which was corroborated by P.W.2 brother and P.W.5 daughter of the P.W.1, cannot be found fault with. Soon after the deceased was declared dead i.e. on 03.11.2014 itself, immediately, the same intimation was forwarded to the Inspector of Police. Therefore, the trial court came to the conclusion that when P.W.1 and P.W.2 had left the hospital to her father's house, out of fear, they came back to the police station on the next day morning to give a complaint, the said explanation appears to be more plausible. Therefore, the argument of undue delay in lodging the FIR has no merit.

16. Thirdly, according to the learned Counsels for the appellants the father's name of the 3rd accused was not mentioned in the complaint, but the same was mentioned in Ex.P.12 F.I.R. which also affects the case of the prosecution. In our considered opinion, moreover the discrepancies regarding not mentioning the name of the father of the 3rd accused in the complaint cannot go into the root of the prosecution case.

17. Fourthly, coming to the presence of P.Ws.1 and 2 in the place of occurrence, the evidence of P.W.16 Muthukumar, trekker owner plays a significant role who deposed that he was an owner of the trekker bearing No.TN 69 F 7777 and 1 ½ years before he was called to the spot by the police and on his trek only the deceased was taken to the Government Medical College Hospital, Tirunelveli accompanied by P.W.1 and P.W.2. From that, nothing can be inferred that he was ill-disposed against the accused and his family. Since the evidence of P.W.16 clearly points the presence of P.W.1 and P.W.2, the trial court has safely accepted the evidence of P.W.16 which cannot be doubted.

18. Further, the trial court accepting the evidence of P.W.16 Muthukumar, Trekker owner, has placed more significance on the same for the reason that the evidence of P.W.16 is clinching to prove the presence of P.W.1 and P.W.2 at the place of occurrence inasmuch as the case of the defence was that P.W.1 and P.W.2 cited as eye-witnesses in this case cannot be trusted witnesses for the reason that though P.W.1 being the wife of the deceased and P.W.2 being the brother-in-law of the deceased, they have not made any attempt to save the deceased and there was no any blood stains in the dresses of P.W.1 and P.W.2. Therefore, the presence of P.W.1 and P.W.2 in the place of occurrence cannot be accepted. Hence, it was pleaded that the presence of P.W.1 and P.W.2 in the place of occurrence as stated by the prosecution was highly doubtful and therefore, their evidence cannot be taken into account whereas the



trial court accepted the case of the prosecution taking into account the evidence adduced by P.W.16. P.W.16 Muthukumar, Trekker owner in his cross examination deposed that he was called by a policeman from Thisaiyanvillai Police Station to come to Pound Street and as it was a call made by the policeman, he went to the place wherein 5 or 6 policemen were present. After reaching the place of occurrence, himself along with the driver of the trekker, the deceased and his wife and brother in-law went to the Government Medical College Hospital, Tirunelveli. P.W.16 has also clearly spoken that when P.W.1 was crying P.W.2 consoled his sister. Therefore, P.W.16 has deposed before the trial court that P.W.1 wife and P.W.2 brother-in-law of the deceased were travelling along with the dead body of the deceased to the Government Medical College Hospital, Tirunelveli. Therefore, when P.W.16 who is an independent witness, has corroborated the evidence of P.W.1 and P.W.2 that they were present at the time of occurrence and they were also accompanying the dead body from the place of occurrence to the Government Hospital, Tirunelveli, the argument of the learned Counsels for the appellants that there was no injury sustained by P.W.2 nor any blood stains found in his body, hence, the evidence of P.W.2 that he had seen the occurrence and the P.Ws.1 and 2 tried to stop the accused is highly doubtful are liable to be rejected. Therefore, in our considered opinion, the evidence of P.W.1 and P.W.2 speaking clearly how the deceased was killed by the accused cannot be doubted. Therefore, the conclusions reached by the trial court holding that the accused 1 and 2 is guilty of the offence is in order.

19. Lastly, coming to the medical evidence with regard to the oral testimony of P.W.1 and P.W.2 regarding the injuries sustained by the deceased, which were cogent and acceptable, P.W.17 Doctor having conducted autopsy found as many as 18 injuries out of which first 5 injuries are cut injuries and the remaining injuries are abrasions. It was further explained that the abrasion injuries are possible on fall over the floor and the same Doctor has also deposed that the remaining injuries are possible by cut with Aruval who also opined that the injuries 3, 4, 6 and 10 would cause the sudden death of a person which are as follows:

3. A horizontal sapping heavy cut injury of size 10x2 c.m. X cavity deep over left side of head. It lies 4 c.m. Above left ear. It cuts underlying skull, duramater and brain;

4. A horizontal gaping heavy cut injury of size 10x2 c.m. X cavity deep over left side of head. It lies 1 c.m. below injury No.3. It cuts underlying skull, duramater and brain;

6. An oblique gaping heavy cut injury of size 11 x 2 c.m. X cavity deep over left side of back of head. It lies 1 c.m. Below injury No.5. It cuts underlying skull, duramater and brain:



10. An oblique gaping heavy cut injury of size 20 x 4 x 7 c.m over back of neck. It lies 1 c.m. Below to injury No.9. It cuts underlying soft tissues, third cervical vertebra and spinal cord.''

Since the appellants had not taken any effort to disprove the evidence of P.W.17, on perusal of the oral evidence of P.Ws.1 and 2, the trial court has rightly held that the injuries on the head and also the neck have caused the death of the deceased. That clearly shows that the evidence of P.W.1 and P.W.2 that both the appellants caused injuries indiscriminately by cutting with Aruvals on the body of the deceased cannot be doubted. Therefore, when the trial court has accepted that the place of occurrence has been found to be correct, a trivial flaw of delay in giving FIR cannot come to the rescue of the appellants and that the intention to commit murder of the deceased has clearly been proved beyond a reasonable doubt. Thus, the prosecution has connected the crime with the appellants herein. In view of all the above, we do not find any infirmity in the impugned findings and conclusions of the trial court that the prosecution has established its case beyond all reasonable doubts.

20. In the result, these Criminal Appeals fail and the same are accordingly dismissed. The trial court is directed to secure the appellants for undergoing the remaining period of sentence.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. The Principal District Munsif cum Judicial Magistrate,
Nanguneri, Tirunelveli District.
2. The Chief Judicial Magistrate, Tirunelveli.
3. The III Additional Sessions Judge,
Tirunelveli.
4. The District and Sessions Judge, Tirunelveli.



5 The Inspector of Police,
Thisayanvilai Police Station,
Tirunelveli District.

6 The Superintendent, Central Prison, Palayamkottai.

7 The District Collector, Tirunelveli.

8 The Commissioner of Police, Tirunelveli.

9 The Director General of police,
Mylapore, Chennai.

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)

+1 CC to Mr.K.PRABHU, Advocate (SR-21678[F] dated 10/11/2020)

+1cc to Mr. Niranjan S.Kumar, Advocate Sr.No.21634

Crl.A. (MD) Nos.54 and 81 of 2018
09.11.2020

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