



BAIL SLIP

The Petitioner/Appellant/Accused namely Mayandi, S/o. Thirumalai Nambi, Male, Aged about 40 years, was released on bail vide order made Crl.MP(MD)No.1104 of 2018 in Crl A(MD)No.75 of 2018 on 23.04.2018.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **17.12.2019**

Pronounced on : **18.09.2020**

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI
Crl.A. (MD)No.75 of 2018

Mayandi ... Appellant /Accused (Single)

Vs.

State rep. by
The Inspector of Police,
Thirukurungudi Police Station,
Tirunelveli District.
Cr.No.26 of 2014

... Respondent/Respondent/Complainant

PRAYER: Appeal filed under Section 374 of the Code of Criminal Procedure, to call for the entire records connected to the judgment in S.C.No.120 of 2015 on the file of the 3rd Additional District and Sessions Court, Tirunelveli, dated 06.02.2016 and set aside the conviction and sentence imposed against the appellant.

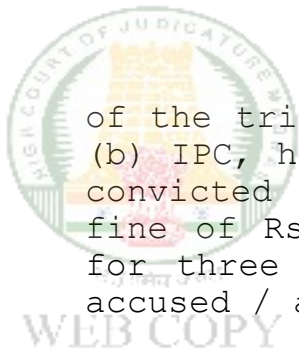
For Appellant : Mr.E.Somasundaram

For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

JUDGMENT

B. PUGALENDHI, J. ,

The sole accused in S.C.No.120 of 2015 on the file of the learned III Additional District and Sessions Judge, Tirunelveli, is the appellant herein. He was charged for the offence punishable under Sections 294(b) & 302 IPC and the trial Court, in conclusion



of the trial, though acquitted him of the offence under Section 294 (b) IPC, has found him guilty of the offence under Section 302 IPC, convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.1000/-, failing which, to undergo rigorous imprisonment for three months. Aggrieved over the conviction and sentence, the accused / appellant has preferred the instant criminal appeal.

2. The brief facts of the case, as projected by the prosecution, in a nutshell, are as follows:

2.1. PW1, Tmt.Sornam, is the wife of the deceased, Maharajan. The deceased has two sisters and two brothers, of which, three have already died. The accused, Mayandi, is the nephew of the deceased. The deceased and PW1 have three daughters and all of them got married. Since all the daughters of the deceased got married, the accused is said to have demanded the properties from the deceased, which was turned down by the deceased. Therefore, the accused developed motive as against him. On 27.02.2014, in the evening hours, the deceased asked PW1 to get ready to go temple, on account of Sivarathri and thereafter, left for bazaar in his motorcycle. But, he did not return home and PW1 received an information from Thalavaipuram that her husband was assaulted and was lying in the ground. PW1 went to the occurrence place, where she found her husband in a pool of blood.

2.2. PW2, Thiru Murugan, resides in Nambithalaivan Pattiyam. On 27.02.2014, at about 05.45 pm, when he was having Tea in Subbiah Nadar's [PW3] Tea Stall, he heard a noise and witnessed the deceased in a pool of blood. He attempted to inform the same to PW1, but, she did not attend the call. PW4, Thiru Arul Rajapandian, is the son-in-law of the deceased and PW1. On 26.02.2014, he was in his father-in-law's house for Sivarathri function. On 27.02.2014, at about 05.50 pm, when he was having Tea in PW3's Tea Stall, the deceased came there in his motorcycle and was having a chat with one Murugan [PW2]. At that time, the accused came there in a motorcycle, bearing registration No.TN-72-B-8853 and abused the deceased in filthy words, took an Aruval [MO1] and caused several cut injuries. When the persons nearby came for rescue, he flew away from the place of occurrence in his motorcycle. He informed the incident to his mother-in-law [PW1]. PW5, Thiru Chithirai, is also at the place of occurrence at the relevant point of time and also witnessed the occurrence. PW6, Thiru Kombiah Thevar, though treated as a hostile witness, admitted the place of occurrence and he witnessed the accused fled away from the scene of occurrence in his motorcycle, when he was on his way to PW3's Tea Stall.

2.3. PW1, along with PWs.4 to 6, took the deceased to the Government Hospital, Palayamkottai, where he was declared brought dead. PW1, thereafter, went to Thirukurungudi Police Station and lodged the complaint [Ex.P1] before the Sub-Inspector of Police on 27.02.2014 at about 09.00 pm. Based on the complaint



lodged by PW1, PW13 registered a case in Crime No.26 of 2014 for the offence under Section 302 IPC. The printed First Information Report is marked as Ex.P12. PW14, the Constable, delivered the express First Information Report to the Judicial Magistrate, Nanguneri, on 27.02.2014 at about 11.10 pm.

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2.4. Tmt.Nagakumari [PW18], Inspector of Police, on receipt of the intimation about the registration of the case in Crime No.26 of 2014, went to the place of occurrence at about 09.50 pm on 27.02.2014 and prepared the observation mahazar [Ex.P16] and rough sketch [Ex.P17] in the presence of PW7 and another. She recovered the blood split in the place of occurrence in a cotton [MO2], in the presence of PW7, under the cover of mahazar Ex.P18 and also recorded their statements. She also examined PWs.1 to 6 and also recorded their statements. On the next day, at about 08.25 am, she conducted inquest on the body of the deceased in the Mortuary of Tirunelveli Government Hospital, in the presence of panchayatars. The inquest report is marked as Ex.P19. She, then, forwarded the body of the deceased for postmortem.

2.5. PW15, is the Constable who identified the body of the deceased to the Doctor for postmortem. After the completion of postmortem, he handed over the body of the deceased to his family members and the cloths worn by the deceased to the Inspector of Police [PW18].

2.6. PW17, Dr.Seethalakshmi, received the requisition for conducting postmortem from the Inspector of Police [PW18] at about 10.40 am on 28.02.2014. She commenced the postmortem at about 10.50 am and found the following ante mortem injuries on the body of the deceased:

"1) Oblique gapping heavy cut injury of size 10 x 1 cm x bone deep seen over right parietal region 13 cm above right ear extending to 9 cm above occipital protuberance. It cuts underlying muscles, vessels, nerves and parietal bone.

2) Oblique gapping heavy cut injury of size 5 x 1cm x bone deep seen 1 cm outer to injury no.1. It cuts underlying muscles, vessels, nerves and parietal bone.,

3) Oblique gapping heavy cut injury of size 13 x 1.5 cm x 1 cm seen over upper part of front of neck, 2 cm from chin, 7 cm below angle of right jaw, 7 cm below angle of left jaw. It cuts underlying muscles, vessels and nerves.

4) Oblique gapping heavy cut injury of size 7 x 1 x 1 cm seen over upper part of front of neck, 0.5 cm below injury no.3. It cuts underlying muscles, vessels and nerves. It cuts underlying muscles, vessels and nerves.

5) Oblique gapping heavy cut injury of size 3 x 1 x 1 cm seen over upper part of front of neck, 0.5 cm below injury no.4. It cuts underlying muscles, vessels and nerves.



6) Oblique gapping heavy cut injury of size 3 x 1 cm x 3 cm seen over middle of front of neck 3 cm below injury no.5. It cuts underlying muscles, vessels, nerves and trachea.

7) Two oblique gapping cut injuries of sizes 2 x 1 x 1 cm seen over top of left shoulder. It cuts underlying muscles, vessels and nerves.

8) Cut injuries of sizes 2 x 1 cm x 1 cm, 3.3 x 1 x 1 cm seen over right thumb. It cuts underlying muscles, vessels and nerves.

Abrasions seen over the following areas:

a) 4 x 1 cm over front of lower part of neck;

b) 3 x 0.5 cm over front of lower part of neck 1 cm below injury no.a;

c) 4 x 0.5 cm over front of lower part of neck 0.5 cm below injury no.b;

d) 11 x 0.5 cm over lower part of front of neck 0.5 cm below injury no.c;

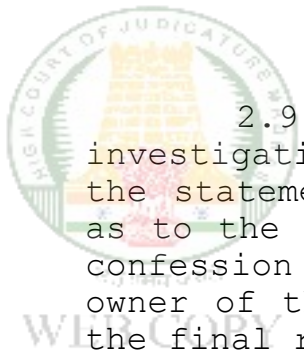
e) 2 abrasions of sizes 3 x 0.5 cm, 2 x 1 cm and 3 x 1 cm over top of left shoulder; and

f) 4 x 2 cm over left knee, 2 x 1 cm over upper outer aspect of left side of chest."

PW17 gave her final opinion that the deceased would appear to have died of multiple heavy cut injuries to region of neck and that injury no.6 is fatal in nature.

2.7. On 03.03.2014, the accused surrendered before the Judicial Magistrate, Kovilpatti and on receipt of the information, PW18 formerly arrested the accused and took him under custody on 05.03.2014. The accused gave a voluntary confession statement and based on the same, PW18 recovered the Aruval [MO1] at about 07.45 pm. On the next day, at about 10.00 am, she recovered the motorcycle, bearing No.TN-72-B-8853, used by the accused. She has then sent the recovered material objects for chemical analysis.

2.8. On 02.07.2014, at about 00.30 hours, when PW16, Sub-Inspector of Police was on duty, one lady Constable, Saraswathi, No.2957, who was on station para duty, reported that there was a fire accident in the Station. PW16, along with the Fire Service Department and general public, get rid of the fire and in that accident, several vehicles parked inside the police station burnt. One of the burned vehicles includes the vehicle pertaining to the present case on hand, ie., TN-72-A-8853, which was recovered under the cover of mahazar Ex.P7. With regard to this fire accident, a case in Crime No.74 of 2014 was registered for the offence under Section 436 IPC & Section 3 of TNPPDL Act and the same is also marked as Ex.P13.



2.9. The Inspector of Police [PW19] conducted the further investigation in this case and enquired the witnesses. He recorded the statements of the chemical analyst and also made investigation as to the real owner of the vehicle M02, recovered pursuant to the confession made by the accused. But, he could not find the real owner of the vehicle. In conclusion of the investigation, he filed the final report as against the accused.

2.10. In support of the prosecution, as many as 19 witnesses have been examined and 19 documents have been marked, besides 6 material objects.

3. The available evidences from the prosecution witness are as follows:

i) PW1, Tmt.Sornam, is the wife of the deceased. She speaks about the motive between her husband and her husband's nephew. She also speaks about the complaint [Ex.P1] lodged by her.

ii) PW2, Thiru Murugan and PW3, Thiru Subbiah Nadar were treated as a hostile witness.

iii) PW4, Thiru Arul Rajapandian, is the son-in-law of the deceased and PW1. He resides in Pathamadai. On 26.02.2014, he was in his father-in-law's house for Sivarathri function. On 27.02.2014, at about 05.50 pm, when he was having Tea in Subbiah Nadar Tea Stall, he witnessed the occurrence and attempted to inform the same to his mother-in-law [PW1].

iv) PW5, Thiru Chithirai, resides in Nambithalaivan Pattiyam. On 27.02.2014, at about 05.50 pm, when he was in Subbiah Nadar Tea Stall, he witnessed the occurrence.

v) PW6, Thiru Kombiah Thevar, also resides in Nambithalaivan Pattiyam. According to him, on 27.02.2014, in the evening hours, when he was on his way to Subbiah Nadar Tea Stall, he witnessed the accused fleeing away from the scene of occurrence in the motorcycle [M01].

vi) PW7, Thiru Thirumalai Nambi, is the mahazar witness.

vii) PW8, Thiru Ganesan, resides in Nambithalaivan Pattiyam. On receipt of the information as to the demise of Maharajan, he went to Palai High Ground Hospital on 28.02.2014 and he witnessed the injuries on the body of the deceased.

viii) PW9, Thiru Mohammed Ismail, is the Village Administrative Officer and he speaks about the confession made by the accused and the consequent recovery of material objects.

ix) PW10, Thiru Samy Durai, is the staff from Tamil Nadu Electricity Board. According to him, there was no power cut on the area at the relevant point of time and all the street lights were properly working.

x) PW11, Thiru Velmurugan, is the Head Clerk in the Court of Judicial Magistrate, Valliyur and he speaks about the biological report.

xi) PW12, Thiru Balamurugan, is the Assistant in the Forensic Science Laboratory, Tirunelveli and he speaks about the bloodstain in the material objects MOs.1 to 5.



xii) PW13, Thiru Samuthiram, is the Sub-Inspector of Police, who registered the First Information Report in Crime No.26 of 2014 [Ex.P12].

xiii) PW14, Thiru Subramanian, is the Constable, who handed over the express First Information Report to the learned Judicial Magistrate, Valliyur.

xiv) PW15, Thiru Senthil Suresh, is the Constable, who identified the body of the deceased for postmortem to the Doctor [PW17].

xv) PW16, Thiru Russel Raj, is the Sub-Inspector of Police and he speaks about the fire accident that occurred in the Police Station on 02.07.2014 and the registration of the First Information Report in Crime No.74 of 2014 [Ex.P13].

xvi) PW17, Dr.Seethalakshmi, is the Doctor, who conducted Autopsy on the body of the deceased. The postmortem report is marked as Ex.P14.

xvii) PW18, Tmt.Nagakumari, is the Inspector of Police, who conducted the preliminary investigation.

xviii) PW19, Thiru Jawahar, is the Inspector of Police, who conducted the final investigation and filed the final report.

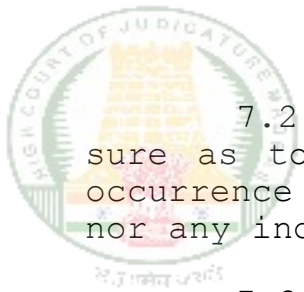
4. After the prosecution evidence was closed, the incriminating materials were put to the accused under Section 313 Cr.P.C and the accused denied the same. Though the accused has stated there are evidences in support of his case, neither oral nor documentary evidences were marked.

5. In conclusion of the trial, the trial Court found the appellant / accused guilty, convicted and sentenced him as stated supra. As against the same, the appellant has preferred the instant appeal.

6. Heard Mr.E.Somasundaram, learned Counsel appearing for the appellant / accused and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent / State.

7. Mr.E.Somasundaram, learned Counsel for the appellant has made his submissions as follows:

7.1. PW1 is not an eye witness and PWs.2 & 3, who are examined as eye witnesses, have turned hostile. The remaining eye witnesses are PWs.4 & 5 and they are the son-in-law and co-brother, respectively, of the deceased and both of them are residing in another village. According to him, PWs.4 & 5 are closely related to the deceased and also residing far away from the place of occurrence and there is no possibility for them to be present in the place of occurrence at the relevant point of time. Therefore, the conviction based on the untrustworthy evidence of PWs.4 & 5 is bad in law.



7.2. He also relied upon the evidence of PW1 that PW1 was not sure as to who informed her about the occurrence over phone. The occurrence was taken place in a Tea Stall run by PW3. Neither PW3 nor any independent witness supported the case of the prosecution.

7.3. After the occurrence, the deceased was taken to the Hospital in a Private Ambulance. But, neither the Ambulance Driver nor the Doctor, who attended the deceased, was examined by the prosecution and the Accident Register has also been purposely suppressed, as it would affect the prosecution case.

7.4. According to PW5, the Sub-Inspector of Police, Thirukurungudi Police Station [PW13] came to the occurrence place and helped them to send the deceased to the Hospital in an Ambulance. But, the Sub-Inspector of Police [PW13], who registered the First Information Report, would deny that prior to the complaint [Ex.P1], the Police was not aware of the occurrence.

7.5. The evidence of PWs.5 & 6 are contradictory to each other, as to whether the deceased was taken to the Palayamkottai Hospital or Government Hospital, Tirunelveli.

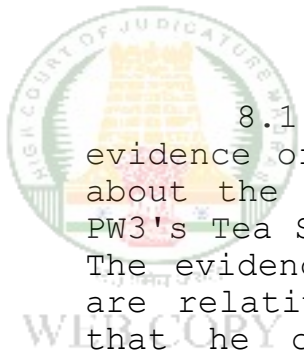
7.6. The accused came to the place of occurrence in a Yamaha motorcycle, bearing registration no.TN-72-B-8853 and the same was also recovered by the Police. However, the motorcycle was not produced before the Court, since the motorcycle was damaged along with the other vehicles which were kept in the police custody. But the prosecution has not taken any steps to establish their case that the accused came to the occurrence in that motorcycle.

7.7. After the commission of offence, the accused is said to have thrown the weapon [MO1] in a land belonging to one Arumugam and pursuant to the confession statement, the weapon [MO1] was recovered and also sent for chemical analysis. But, the evidence of the Scientific Expert [PW12] demolishes the prosecution theory that there is no bloodstain in the weapon [MO1] recovered. Moreover, the said Arumugam, in whose land the weapon [MO1] was alleged to be recovered, was also not examined.

7.8. Thiru Mohammed Ismail [PW9], Village Administrative Officer, who was examined for the recovery of the weapon [MO1], admits that though the place of recovery was not within his jurisdiction, he was summoned to the Police Station and therefore, the recovery of the weapon has not been established by the prosecution.

Therefore, the learned Counsel prays for interference.

8. Per contra, Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor has made his submissions as follows:



8.1. The prosecution has established its case through the evidence of PWs.1, 4 & 5. Though PW6 turned hostile, he has stated about the place of occurrence and that when he was on his way to PW3's Tea Stall, he witnessed the accused leaving in his motorcycle. The evidence of PWs.4 & 5 cannot be disbelieved mere because they are relatives to the deceased. PW4 has explained in his evidence that he came to the place of occurrence for the purpose of Sivarathri Pooja and similarly, PW5 came to the occurrence place for consuming Tea and therefore, their evidence cannot be disbelieved on the ground that they are close relatives or that they are residing in some other place.

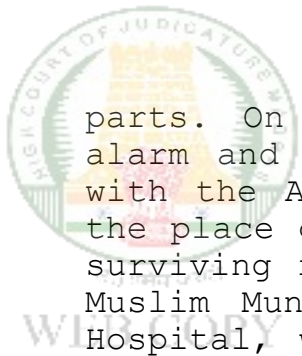
8.2. The ground raised by the defence Counsel that there is a contradiction with regard to the Hospital in which the deceased was taken for treatment after the occurrence is not correct that the accused has not disputed to the Doctor [PW17] that there is some other Hospital at Palayamkottai.

8.3. The motorcycle recovered from the accused was not marked before the Court, in view of the accident that occurred in the respondent Police Station and the motorcycle bearing registration no.TN-72-B-8853, Yamaha make, recovered from the accused was also burnt in the accident that took place on 02.07.2014, along with other properties. The First Information Report for the said accident registered on the file of the Thirukurungudi Police Station in Crime No.74 of 2014 was marked before the trial Court, through the Sub-Inspector of Police [PW16] and therefore, the non-production of the motorcycle recovered from the accused is not a material defect to disbelieve the case of the prosecution.

8.4. According to him, the evidence of PWs.4 & 5, the eye witnesses, clearly made out a case against the accused and there is no reason to interfere with the order of the trial Court and he prays for dismissal.

9. This Court has paid it's anxious consideration to the rival submissions and also to the materials placed on record.

10. The occurrence was taken place on 27.02.2014 at about 05.50 pm at Thalavaipuram, near the Tea Stall belong to PW3. The complaint was lodged at the instance of PW1, Tmt.Sornam, wife of the deceased, on the same day, at about 09.00 pm and the First Information Report reached the concerned Magistrate Court at about 11.10 pm. According to her complaint [Ex.P1], on 27.02.2014, her husband informed her that he is going to Ervadi and went in his motorcycle and around 05.50 pm at Thalavaipuram Subbiah Nadar's [PW3] Tea Stall, on seeing Murugan [PW2], S/o.Gomathi Thevar, he stopped for a while and was chatting with him and at that time, the accused came in a Yamaha motorcycle and by questioning that why he is not agreeing for the partition of the properties, assaulted her on the back of his head and also on other



parts. On seeing this incident, Murugan [PW2] and others raised alarm and therefore, the accused left the place in his motorcycle with the Aruval. On the information from the persons, who were in the place of occurrence, she went to the spot and found her husband surviving for his life, arranged an Ambulance through the TamilNadu Muslim Munetra Kalagam, Ervadi, and took him to the High Ground Hospital, where the Doctor, who examined her husband, declared the deceased as brought dead.

11. PW2, Murugan, who informed PW1, during his evidence before the Court did not support the case of the prosecution and therefore, he was treated as a hostile witness. PW2, in his evidence, has stated that on 27.02.2014, he was taking Tea in PW3's Tea Stall and at that time, he heard a sound and found the deceased was lying in a pool of blood. The occurrence was taken place near PW3's Tea Stall, but, he also turned hostile.

12. PW4 is the son-in-law of the deceased and PW1 and he was examined as eye witness. According to him, he was residing at Pathamadaai and he came to the occurrence village for the purpose of Sivarathri Pooja and on 27.02.2014 at about 05.50 pm, when he was having Tea at PW3's Tea Stall, his uncle, the deceased, came from East and was talking with Murugan [PW2] and at that time, the accused came in a black colour Yamaha motorcycle, bearing registration no.TN-72-B-8853, parked the vehicle, abused his uncle and also attacked him with Aruval. Since the persons nearby raised alarm, the accused escaped from the place of occurrence and thereafter, he informed his mother-in-law [PW1] and also took the deceased to the Hospital in the Ambulance along with PWs.1 & 5.

13. PW5 is also a resident of Patayam Village, where he was working as a Mason and he is the co-brother of the deceased. According to him, he was also taking Tea in PW3's Tea Stall at the relevant point of time and Murugan [PW2] was also in the Tea Stall. At that time, the deceased Maharajan, who came in a motorcycle, stopped his vehicle and was talking with PW2 and at that time, the accused, who came in a motorcycle, parked his vehicle and by abusing the deceased, attacked him with Aruval. PW5, in his evidence, has further stated that he along with PW6 has lifted the deceased to the Ambulance and accompanied PW1 to the Hospital in the Ambulance.

14. PW6 has also admitted that he along with PW5 lifted the deceased to the Ambulance. But, he denied that he has not witnessed the occurrence, however, he witnessed the accused leaving the place of occurrence.

15. Now the evidence available from the prosecution case is the evidence of PWs.4 & 5, who were examined as eye witnesses to the occurrence.

16. Admittedly, both PWs.4 & 5 are close relatives of the deceased. But, the law does not lay down any separate parameter for



appreciating the evidence of a relative, *vis-a-vis*, the evidence of a person not related to the victim.

17. The Honb'le Supreme Court in **Chakali Maddilety and others, Vs. State of Andhra Pradesh**, reported in 2010 (12) SCC 72, has held that the depositions of close relatives cannot be discarded, merely because they are relatives, but, their evidence has to be considered with due care and caution.

18. Therefore, we have to analyse their evidence very carefully. PW1 lodged the complaint at about 09.00 pm, after the Doctor declared that the deceased was brought dead. On her complaint [Ex.P1], PW1 did not whispered about the presence of PW4 and PW5 in the place of occurrence. According to her, it was PW2, with whom her husband was talking at the time of occurrence near the Tea Stall and it was PW2 and others who were standing near the Tea Stall have witnessed the occurrence and raised the alarm and therefore, the accused fled away from the place of occurrence. PW4 is none other than the son-in-law of PW1 and PW5 is her sister's husband. When PW1 refers about the presence of a stranger, Murugan [PW2] in her complaint [Ex.P1], she would have referred about her son-in-law [PW4] as well as her sister's husband [PW5], if they would have really present in the place of occurrence as alleged by the prosecution.

19. According to PW5, he along with PW6 lifted the deceased to the Ambulance. He did not refer about PW4 in this regard. In fact, according to PW1 also, she along with PWs.5 & 6 took the deceased to the Hospital and she did not referred about PW4. As rightly pointed out by the learned Counsel for the appellant, the respondent has not recovered any bloodstained cloths from PWs.4 & 5.

20. Both PWs.4 & 5 are close relatives of the deceased and according to them, the accused came in a motorcycle, parked the vehicle, quarrelled with the deceased for partition and then cut him with Aruval. The conduct of PWs.4 & 5, being close relatives, in keeping quiet without taking any steps to thwart the attack on the deceased raises a doubt on their actual presence in the place of occurrence as alleged.

21. As rightly pointed out by the learned Counsel for the appellant, the deceased in this case was taken to the Hospital in a Private Ambulance, belonging to Tamilnadu Muslim Munetra Kalagam. Neither the Ambulance Driver, nor the Doctor who declared the deceased as brought dead was examined in this case. Moreover, the Accident Register was also not marked by the prosecution. The deceased, according to PW1, was struggling for his life in a pool of blood when she witnessed him and when there are Hospitals available at Erwadi near the place of occurrence, there is no proper explanation for taking the deceased to a far away place, instead of providing him any first aid from a nearby Hospital.

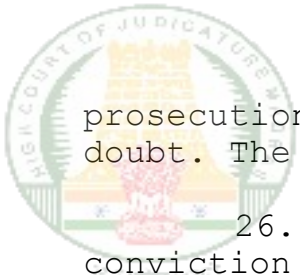


22. Admittedly, the accused is the brother's son of the deceased and his father was already dead. His wife was also dead. He left his three children in the custody of a relative and working in a Private Company at Chennai. Among the brothers of the deceased, the deceased alone was surviving and was also keeping the properties and the accused raised quarrel with the deceased for partition and also cut him with Aruval. According to the prosecution case, the accused came to the place of occurrence in a black colour Yamaha motorcycle bearing registration no.TN-72-B-8853. This black colour motorcycle was also recovered by the Inspector of Police [PW18] on 06.03.2014, pursuant to the confession statement of the accused under a cover of mahazar Ex.P7. But, this motorcycle was not placed before the trial Court.

23. The non-production of the motorcycle by the prosecution is taken as a ground by the defence that the prosecution has failed to prove their case that the accused came in the motorcycle. But the reason for such non-production is that when the vehicle was parked along with other properties at Thirukurungudi Police Station on 02.07.2014, there was a fire accident, in which, all the vehicles got damaged. In this regard, a case was also registered in Crime No.74 of 2014 on the file of the Thirukurungudi Police Station on the complaint of the Special Sub-Inspector of Police, one Russel Raj [PW16] and the First Information Report was also marked as Ex.P13. But on a careful reading of the evidence of the Inspector of Police [PW19], this vehicle bearing registration no.TN-72-B-8853 stands in the name of one Gomathi and she was examined over phone by the Inspector of Police and she has stated to him that she sold the vehicle to one Premkumar in the year 2007. But, there is no further investigation in this regard. Though the vehicle was recovered on 06.03.2014, no proper steps were taken by the investigation agency to fix this motorcycle with the accused and the nexus between the Premkumar and this accused was also not established by the prosecution.

24. Apart from the motorcycle, an Aruval [MO1] was also recovered pursuant to the confession statement of the accused. According to his confession, after the commission of offence, he hid this weapon [MO1] in a land belonging to one Arumugam. The weapon [MO1] was also sent for chemical analysis. But the Scientific Expert has reported that there is no bloodstain in the weapon [MO1]. Moreover, the said Arumugam, on whose land the alleged recovery was made, was also not examined by the prosecution.

25. Excepting the evidence of PWs.4 & 5, there is no other concrete evidence to establish the case of the prosecution. But their presence in the place of occurrence itself is also highly doubtful as discussed supra. In view of the foregoing reasonings, we are of the considered opinion that it is not safe to sustain the



prosecution has not established its case beyond any reasonable doubt. The appellant / accused is entitled for the benefit of doubt.

26. In fine, this Criminal Appeal is allowed and the conviction and sentence imposed by the learned III Additional District and Sessions Court, Tirunelveli, in S.C.No.120 of 2015, dated 06.02.2016, are set aside. The appellant / accused is acquitted from the charges levelled against him. Fine amount, if any paid, shall be refunded and bail bonds shall stand terminated.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gk

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1)The III Additional District and Sessions Judge,
Tirunelveli.
- 2)The Inspector of Police,
Thirukurungudi Police Station,
Tirunelveli District.
- 3)The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4)The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.
- 5)The Superintendent Central Prison, Palayamkottai,
Tirunelveli.

+1 CC to Mr.E. SOMASUNDARAM, Advocate (SR-17677[F]dated 22/09/2020)

Judgment made in

Crl.A. (MD)No.75 of 2018

18.09.2020