



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A(MD)No.111 of 2015

1.Christudhas

2.Jebadas

... Appellants /Accused 1 and 2

Vs.

State represented by
the Inspector of Police,
Arumanai Police Station,
Kanyakumari District.

[Crime No.103 of 2004]

... Respondent/ Complainant

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the judgment and conviction dated 10.02.2015 by the learned Sessions Judge, Kanyakumari District at Nagercoil in S.C.No.29 of 2005 and acquit the appellants.

For Appellant : Mr.C.Muthusaravanan
No.1

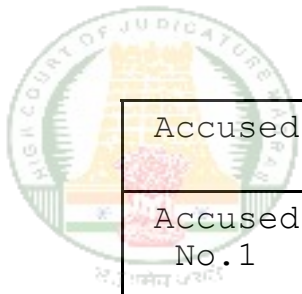
For Appellant : Mr.R.Venkatesan
No.2

For Respondent : Mr.A.Robinson
Government Advocate (Crl side)

JUDGMENT

This appeal is filed as against the conviction and sentence imposed on the appellants in S.C.No.29 of 2005 by judgment dated 10.02.2015 passed by the learned Sessions Judge, Kanyakumari District @ Nagercoil.

2.The appellants are the accused in S.C.No.29 of 2005, on the file of the learned Sessions Judge, Kanyakumari District @ Nagercoil and the accused No.1 was tried for the commission of offence under Sections 449, 302, 307 r/w 34 IPC and accused No.2 was tried for the commission of offence under Sections 449, 302 r/w 34, 307 and 324 IPC and in conclusion of the trial, the trial Court by judgment dated 10.02.2005, convicted and sentenced the accused / appellants as follows:



Accused	Section of Law	Sentence of imprisonment	Fine amount
Accused No.1	449 IPC	Rigorous imprisonment for three years	Rs.5,000/- default, six months rigorous imprisonment
	304 Part I IPC	Rigorous imprisonment for ten years	Rs.5,000/- default, three years rigorous imprisonment
Accused No.2	449 IPC	Rigorous imprisonment for three years	Rs.5,000/- default, six months rigorous imprisonment
	307 IPC	Rigorous imprisonment for five years	Rs.25,000/- default, one year rigorous imprisonment

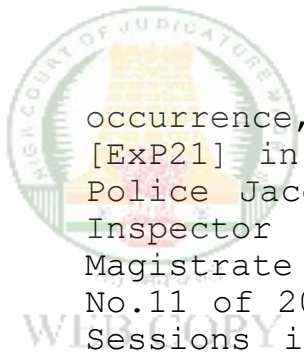
3.Aggrrieved over the conviction and sentence, the appellants have filed this present criminal appeal.

4.The brief facts of the prosecution case are that PW1 Alphonsal is the sister of the appellants and the appellants are native of Mulluvilai Village. PW1 was married to the deceased Wilson twenty years prior to the occurrence and after the marriage they lived in the village of the deceased and thereafter, they sold the property and settled down at Mulluvilai Village near the house of the appellants. The appellants / accused with an intention to vacate the deceased from the village, created problems and assaulted the deceased on 10.04.2004 at about 5.00pm. In the course of the incident, Alphonsal [PW1] wife of the deceased has also sustained injury and PW2 and PW3 daughters of the deceased have also witnessed the occurrence. PW1 along with deceased was taken to the Government Hospital at Arumanai by her relative one Devaraj and the Doctor [PW11] treated PW1 and referred her to Kanyakumari Medical College Hospital for further treatment. The deceased was reported dead. On the intimation from the Government Hospital, the Sub Inspector of Police, Janaki [PW15] went to the Government Hospital, Arumanai at about 7.30 pm on 10.04.2004 and recorded the statement from PW1 in ExP1, returned to Arumanai Police Station and registered a case in Crime No.103 of 2004 for the offence under Sections 449, 302 and 307 IPC.

One Shanmugamani, Inspector of Police, Thiruvettaru Police Station, additional charge of Arumanai Police station and another Inspector of Police one Jacob have conducted investigation in this case. But, unfortunately both of the aforesaid Inspectors of Police were no more during the trial. Therefore, the investigation conducted in this case was explained by Janaki [PW15], Sub Inspector of Police, who is aware of the handwriting of those Inspectors of Police.

5.According to PW15, the Inspector Shanmugamani, in charge Inspector at that time conducted an inquest, visited the place of

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occurrence, prepared observation mahazar [Exp6] and rough sketch [Exp21] in this case. The arrest was effected by the Inspector of Police Jacob on 14.04.2004 and the final report was filed by the Inspector of Police on 04.06.2004 before the learned Judicial Magistrate No.I, Kuzhithurai and the same was taken on file in PRC No.11 of 2004. Subsequently, the case was committed to the Court of Sessions in S.C.No.29 of 2005 and tried by the learned Sessions Judge, Kanyakumari District at Nagercoil.

6.During the trial, on the side of the prosecution, 15 witnesses were examined, 25 documents were marked and 7 material objects were produced.

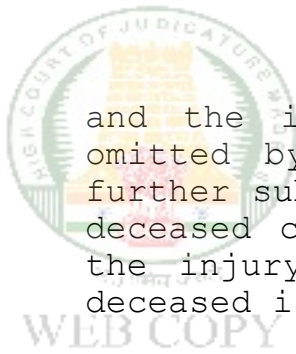
7.The eye witnesses PW1 to PW3 are wife and daughters of the deceased respectively. Among them, eye witness PW1 is an injured witness; PW4 is the neighbour, who took the deceased to the Government Hospital at Arumanai and PW6 and PW8 are the witnesses for the arrest and recovery of MO1 and MO2 from the accused; PW9 is the mahazar witness for the observation mahazar [Exp6], rough sketch [Exp7] and the sample earths [MO6 and MO7]; PW11 is the Doctor, who treated PW1 and also conducted the postmortem of the deceased; PW15 is the Sub Inspector of Police, who registered the case in this case.

8.The incriminating materials were placed before the accused under Section 313 CrPC and the accused had denied the same, however, no witness was examined and no document was marked on the side of the accused. But they stated before the trial Court that the deceased was moving close with one Seenu, a drunkard and also took him to his house. Since the deceased was having four unmarried daughters, the accused objected to for entertaining the said Seenu in the deceased's house and due to which, the deceased had assaulted them on the date of occurrence. The accused have also sustained injuries in this case and PW11 is the Doctor, who treated them at Government Hospital at Arumanai and he also issued wound certificates Exp14 and Exp15 for the injuries sustained by accused No.1 and accused No.2 respectively.

9.In conclusion of the trial, the trial Court found these appellants guilty, convicted and sentenced them as stated supra. As against the conviction and sentence imposed, the appellants have preferred the present appeal.

10.Heard Mr.Muthu Saravanan, learned Counsel appearing for appellant No.2/ accused No.2 and Mr. Venkatesan, learned Counsel appearing for appellant No.1/accused No.1 and Mr.Robinson, learned Government Advocate (CrlSide) appearing for the State.

11.The learned Counsel for the appellants submitted that the ~~Seenu~~ ~~Seenu~~ at the time of occurrence in the occurrence place



and the injuries sustained by the said Seenu were deliberately omitted by the prosecution in the complaint ExP1 itself. It is further submitted that as per the evidence of the Doctor [PW11], the deceased could not have caused any injuries to the accused, after the injury sustained by him and therefore, it is clear that the deceased is the aggressor.

12. According to the learned Counsel, PW2 has deposed that the Police came to her house and recorded a statement from her, which was also attested by her uncle Rajan and this complaint is deliberately suppressed by the prosecution and the said Rajan has also not been examined.

13. The learned Counsel would further submit that the Sub Inspector of Police Janaki, who registered the FIR in this case has issued the passport [ExP18] to the Head Constable [PW14], wherein she has mentioned the case as Crime No.103 of 2004 under Section 174 CrPC. Therefore, this is the first information about the incident and there is no case registered under Section 302 IPC at the first instance.

14. The learned Counsel submitted that the arrest and recovery was made on 14.04.2004, whereas, the Doctor [PW11] in his evidence admitted that the weapons MO.1 and MO.2 were shown to him by the Investigation Officer, on questioning the possibility of the injury on 11.04.2004 itself. Further, PW1 also stated in her evidence that the weapons were shown to her. Therefore, the arrest and recovery as projected by the prosecution is found to be false.

15. He further submitted that both the accused sustained seven injuries on their heads. These injuries sustained by the accused were not explained by the prosecution. But the prosecution has concocted in ExP1 complaint that the deceased assaulted the accused with a Vettu Kathi. But this weapon said to have been used by the deceased, has not been recovered by the prosecution and placed before the Court. Even there are contradictions between the evidence of PW1 and PW2 with regard to the place from where the weapon was taken by the the deceased.

16. According to the learned Counsel for the appellants, the Doctor [PW11] during the cross examination deposed that it is not possible for the deceased to cause injuries on the accused, after suffering the injuries mentioned in the postmortem certificate. Therefore it is clear that the accused are not the aggressors and there are contradictions among the evidence of eye witnesses PWs 1 to 3 and medical evidence of the Doctor PW11.

17. The learned Counsel for the appellants in support of their contentions, has relied on the following judgments of the Hon'ble Supreme Court:

<https://hcservices.ecourts.gov.in/hcservices/> **Dr. Jyoti Singh and others, etc, Vs State of Bihar,**



reported in AIR 1976 SCC 2263;

(2) Kumar Vs State, reported in (2018) 3 SCC (Cri) 245, wherein the Hon'ble Supreme Court has held as follows:

"27. Another point put forth by the learned counsel on behalf of the accused-appellant is that the prosecution has not explained the injuries suffered by the accused and hence prosecution case should not be believed. At the outset, it would be relevant to note the settled principles of law on this aspect. Generally failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true [See : **Mohar Rai and Bharath Rai v. The State of Bihar**, 1968 CriLJ 1479].

28. In Lakshmi Singh and Ors. v. State of Bihar, 1976 CriLJ 1736 this Court observed:

"Where the prosecution fails to explain the injuries on the accused, two results follow :

(1) that the evidence of the prosecution witnesses is untrue; and

(2) that the injuries probabalise the plea taken by the appellants. It was further observed that: In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and, therefore, their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one."

18. Mr. R. Venkatesan, learned Counsel appearing for the appellant No.1 / accused No.1 made an alternate plea that the accused No.1 is confined at Central Prison, from the date of conviction on 10.02.2015 and he has already undergone 5 ½ years of imprisonment and therefore, prays for modification of sentence to that of the period already undergone.

19. Per contra, the learned Government Advocate (Crl Side) appearing for the State submitted that the prosecution has established its case through eye witnesses PWs 1 to 3 and among



them, PW1 is an injured witness. The accused are the aggressors in this case and the accused have also admitted in their statement under Section 313 CrPC about the place of occurrence at the time of occurrence.

20. With regard to the injuries sustained by the accused, the learned Government Advocate submitted that admittedly both the accused have sustained injuries and the same was also admitted by PW 1 to PW3 and the Doctor [PW11] also deposed both the accused were brought to the hospital and on examination, the Doctor [PW11] has opined that the injuries sustained by the accused are simple in nature. The Hon'ble Apex Court in a catena of decisions has held that the non explanation of injuries is not fatal to prosecution, when it appears that the injuries sustained by the accused are simple in nature. He also relied on the decision in the case, *Amar Malla v. State of Tripura*, (2002) 7 SCC 91, wherein the Hon'ble Supreme Court has held as follows:

"9...From the nature of injuries said to have been received by these accused persons, it would appear that the same were simple and minor ones. It is well settled that merely because the prosecution has failed to explain injuries on the accused persons, ipso facto the same cannot be taken to be a ground for throwing out the prosecution case, especially when the same has been supported by eyewitnesses, including injured ones as well, and their evidence is corroborated by medical evidence as well as objective finding of the investigating officer."

21. He would further submit that the same principle has been followed in *State of M.P. v. Ramesh*, (2005) 9 SCC 705, wherein it has been held as follows:

"11...Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance. But mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases. This principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries."

In Raghbir Singh v. State of Rajasthan, (2011) 12 SCC 235, The Hon'ble Supreme Court held thus:



"14...each and every injury on an accused is not required to be explained and more particularly where all the injuries caused to the accused are simple in nature (as in the present case) and the facts of the case have to be assessed on the nature of probabilities..."

22.The learned Government Advocate further submitted that PW1 to PW3 categorically deposed that the accused came to their house with weapons and started to assault the deceased as well as PW1 and the same is corroborated by the medical evidence of the Doctor [PW 11]. The accused are the aggressors and they came to the place of occurrence with weapons. The deposition of the Doctor [PW11] with regard to the physical power of deceased is opinionative in nature, whether the person after sustaining severe injury can assault others or not is depending upon the physical strength of particular person and it will differ from one person to another. The suggestion put forth by the defence is that the problem arose between the deceased and the accused is in respect of accommodating one Seenu in the house of the deceased and except the suggestion nothing brought on record by the accused to substantiate their defence.

23.Insofar as the averment of the appellant that suppression of the genesis of the case is concerned, the learned Government Advocate submitted that no question has been asked to the Sub Inspector of Police [PW15], who is alleged to have recorded that statement of PW1, about the suppression of earliest complaint. It is fairly well settled that the minor discrepancies in the evidence of the eye-witnesses do not shake their trustworthiness. In this regard, he also placed reliance in Appabhai and Another v. State of Gujarat, reported in 1988 Supp SCC 241, wherein the Hon'ble Supreme Court held as follows:

"13..... The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the



entire prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy....."...

24.He further submitted that PW1 was severely injured, while her statement was recorded and out of panic, she may not have stated about the presence of the said Seenu and one cannot expect that statement must contain all minute details of occurrence.

25.With regard to the arrest and recovery, the learned Government Advocate relied on the decision in the case in *Yogesh Singh v. Mahabeer Singh*, MANU/SC/1349/2016 : (2017) 11 SCC 195, the Supreme Court quoted, with approval, its earlier decision in. *Muniappan v. State of T.N.* [C. Muniappan v. State of T.N., MANU/SC/0655/2010 : (2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402], wherein it has been held as follows:

"55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation."

"In *Shamim v. State* (NCT of Delhi), MANU/SC/1016/2018 : (2018) 10 SCC 509, the Hon'ble Supreme Court set out the approach to be adopted in evaluating the testimonies of victims of crime., the Supreme Court has



observed as hereunder :

"12. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole inspires confidence. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error without going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and could not take place of evidence in the court. Small/trivial omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it."

26.The learned Government Advocate further submitted that the prosecution has taken all efforts to examine the said Seenu and the Police also went to Kerala to serve summon to him, but they were unable to find him in the given address and the same is also recorded by the learned trial Court in paragraph No.40 of the judgment has recorded that non examination of I.O is "Act of God", since both of them died and it is impossible for the prosecution to produce them as witnesses.

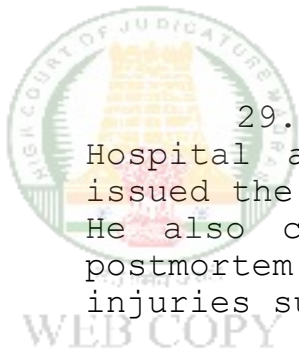
27.He also placed reliance on the decision of the Hon'ble Apex Court in Ambika Prasad and Ors. vs. State of (Delhi Administration, Delhi) (21.01.2000 - SC) : (2000)2 SCC 646, where it is held as follows:



"10. Further, it is to be borne in mind that criminal trial is meant for doing justice to the accused, victim and the society so that law and order is maintained. Hence, as observed by this Court in State of U.P. v. Anil Singh MANU/SC/0503/1988 : 1989CriLJ88 it is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform. Hence, we would only state that it is unfortunate state of affair that police officers resiled from their own statements and deposed something contrary before the Court. Equally, it is unfortunate that Investigating Officer has not stepped into the witness-box without any justifiable ground. But. this conduct of the Investigating Officer or other hostile witnesses cannot be a ground for discarding the evidence of P.W. 5 and P.W. 7 whose presence on the spot is established beyond reasonable doubt. They have suffered injuries and their evidence is corroborated by medical evidence. It is also in conformity with what has been stated in FIR. In any case, Investigating Officer is not at all material witness for the purpose of establishing whether accused or the complainant party was the aggressor. Not only that, accused have examined the defence witnesses for establishing their say. Hence, non-examination of the Investigating Officer cannot be a ground for holding that injured witnesses should not be believed."

Therefore, the learned Government Advocate prayed for dismissal of the appeal.

28. Admittedly, the appellants are brothers and also brothers of PW1 Alphonsal. PW1 was married to the deceased twenty years prior to the occurrence and thereafter she was living with her husband at Kadaiyalumodu Village, native place of the deceased and seventeen years back, they sold their property at Kadaiyalumodu Village and settled down at Mulluvilai village near the appellants' house. PW1 and the deceased are having four daughters namely, PW2, PW3 and two others. These appellants raised certain objections with regard to PW1 family residing at Mulluvilai Village, went to the house of the deceased on 10.04.2004 around 5.00pm with weapons and also assaulted the deceased. When PW1 has attempted to prevent the attack, she also suffered injury, her deceased husband also attacked the accused and on hearing the noise, when the neighbours rushed to their house, the appellants/accused fled away from the place of the occurrence with the weapons.



29.The deceased as well as PW1 were taken to the Government Hospital at Kuzhithurai and the Doctor [PW11], treated PW1 and issued the wound certificate Exp9 for the injuries sustained by PW1. He also conducted autopsy for the deceased Wilson. As per the postmortem certificate, the deceased died to haemorrhage due to the injuries sustained by him on his vital organs.

30.PW1, PW2 and PW3 eye witnesses to the occurrence have stated about the manner of the occurrence and among them, PW1 is an injured eye witness. The accused/appellants also admitted their presence in the place of occurrence, when they were questioned under Section 313 CrPC and according to them, the deceased was moving closely with one Seenu and the said Seenu visited the house of the deceased often. Since PW1 and the deceased are having four unmarried daughters, the accused being the maternal uncles, objected to the visit of the said Seenu. On the date of occurrence also the said Seenu was available in the house of the deceased and he also sustained injuries in the course of the incident. The Doctor [PW11] has also examined the said Seenu, who was brought along with the deceased. Though the said Seenu is an injured eye witness in this case, he was not examined by the prosecution. Moreover, his presence at the place of occurrence and that he also sustained injury, during the course of incident are not mentioned in the complaint [Exp1] and therefore, there is an attempt made by the prosecution to suppress the presence of the said Seenu in the place of occurrence.

31.Apart from the deceased and PW1, the accused have also sustained injuries. The Doctor [PW11], who treated PW1, has also treated the accused, but on 14.04.2004 at about 12.30pm. These appellants /accused were produced before the Doctor [PW11] by the Head Constable 1350 and 1026 of Arumanai Poilce Station with a memo. The Doctor [PW11] noted down the following injuries from the accused No.1 Christudhas as recorded in Exp14:

"1.An infected incised injury of size 4 cm X 1.5 cm X 1 cm present in the right side of forehead. Oblique in direction surrounding tissue edematous, Reddish.

2.An infected incised injury of size 2cm X 5 cm X 05.cm in the left side occipital area of scalp. Oblique in direction. Surrounding tissue infected edematous, Reddish colour."

The following injuries were noted down from the accused No.2 Jebadas in Exp15.

"1.An infected incise injury of size 2.5cm X 1 cmX1cm. Present in the centre of forehead. Oblique in direction. Surrounding tissue and wound infected, edematous, Reddish colour.

2.An infected incised injury of size 2cm X 1cm X 1cm in the left side of parietal area of scalp. Oblique in direction. Surrounding tissue and the wound edeatous, Reddish colour.



3. An infected incised injury of size 2 cm X 1cm X.5cm in the right parietal area of scalp. Oblique in direction. The wound and surrounding tissue edematous and Reddish colour.

4. An infected incised injury of size 2cm X 1cmX1cm behind the right ear. Oblique in direction surrounding tissue and wound edematous and Reddish colour.

5. An dried infected abrasion of size 4cm X 2cm present in the outer aspect of lower part of left forearm. Oblique in direction."

32. The aforesaid injuries according to the learned counsel for the appellants are not explained by the prosecution and therefore, as per the decision of the Hon'ble Supreme Court in Laxmi Singh's case cited supra, the unexplained accused injury is fatal to the prosecution case.

33. In this case, PW1 in her complaint [ExP1] itself has stated that when these appellants / accused attacked her husband / deceased, the deceased also took out a Vettu Kathi from the adjacent place and assaulted both the accused. But, this weapon used by the deceased has not been recovered by the prosecution. Moreover, there is no reference in the observation mahazar [ExP6] that any such weapon was found in the place of occurrence, when the Investigation Officer examined the place of occurrence immediately after the occurrence. The Investigation Officer has also recovered the earth with and without blood from the place of occurrence in the presence of PW9 in ExP7, but this weapon said to have been used by the deceased to assault the accused, has not been recovered from the place of occurrence.

34. The Doctor [PW11], who conducted autopsy admitted in his evidence that the injury sustained by the deceased is grievous in nature and after sustaining such an injury, the deceased could not have caused the injury on the accused as alleged by the prosecution. This evidence of the Doctor [PW11] demolishes the theory of the prosecution that the accused are the aggressors in this case. In the absence of the weapon used by the deceased, it is not safe to conclude that the accused are the aggressors. Therefore, the given circumstances of the case would fall under the ratio laid down by the Hon'ble Supreme Court in Laxmi Singh's case.

35. On receipt of the intimation from the Government Hospital, Arumanai Police Station, the Sub Inspector of Police [PW15] went to the said Government Hospital and recorded the statement of PW1 on 10.04.2014 at about 7.30pm, returned to Arumanai Police Station and registered the case in Crime No.103 of 2004 at 8.30pm. The Sub Inspector of Police [PW15] has also issued a passport [EXP18] to the Constable [PW14] to take care of the corpus lying in the mortuary at the Government Hospital and completed the process of the postmortem.



This ExP18 was issued by Janaki, Sub Inspector of Police of Arumanai Police Station, wherein it is mentioned as follows

"10/04/2004 20/30 நிர் உடன் புறப்பட்டு சென்று அருமனை P.S.Crime No. 103/04 u/s 174 CrPC வழக்கில் இறந்து போன வில்சன் என்பவரது உடலை மீளாத பரிசோதனை அதிகாரியாக அருமனை மருத்துவமனையில் முடித்து உத்தரவுபடி நடந்து வரவும் /

Sd/- XXXX / 10.04.2004
Sub Inspector of Police,
Arumanai PS,
Kanniyakumari District."

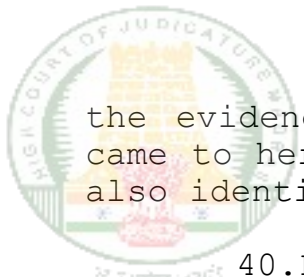
36.The learned Counsel for the appellants raised ground that the early information in this case is suspicious death and later, as an afterthought, the case has been foisted as against these appellants, as it is a case of murder. In support of his contention, he also relied upon the evidence of PW2, the daughter of the deceased, where she has stated that Police came to their house on the date of occurrence and recorded the statement from her, by none other than the Sub Inspector of Police, Janaki [PW15] and signature was also obtained in that statement from one Rajan, uncle of PW2. But, this complaint, according to the learned counsel for the appellants, has been suppressed by the prosecution and the said Rajan, who signed in that statement, was also not examined by the prosecution.

37.Similarly, the deceased and PW1 were taken to the hospital by their relative one Devaraj, he was also not examined by the prosecution. The said Devaraj is also an attester to the complaint [ExP1]. Though the occurrence has taken place at about 5.00pm, and the place of occurrence is also surrounded by several houses, no independent witness near the place of occurrence was examined in this case.

38.According to PW1 to PW3, it is the second accused caused injury on PW1 with the weapon MO.2. But according to the Doctor [PW11], who treated PW1 that the injury No.1 and 2 sustained by PW1 are different in nature and could have been caused by different weapons and therefore, there is contradiction between the ocular evidence and the medical evidence.

39.These appellants/accused are said to have been arrested on 14.04.2004 at about 8.00am in the presence of PW6 and PW8 and pursuant to their confession statements, the weapon MOs.1 and 2 were recovered under a cover of mahazar ExP4 and ExP5 respectively. But the Doctor [PW11], who conducted the autopsy admitted in his evidence that the Inspector of Police has shown the weapons MO.1 and MO.2 on the date of postmortem on 11.04.2014 itself and therefore, the weapons MOs.1 and 2 were very much available with the Investigation Officer on the date of postmortem on 11.04.2014

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the evidence of PW1 that on the next day at about 1.00pm, Police came to her house and shown the weapon Kattari [M01] to her and she also identified the same as that of M01.

40.PW6 and PW 8 are the witnesses to the arrest of the accused and recovery. According to PW6, the accused were apprehended at Devicode Junction in Kerala. According to him, it is a bus stop, where the accused were standing in front of a petty shop and the respondent Police went in an Ambassador car and apprehended them and recorded their statement in front of that petty shop. According to PW8 the other recovery witness, it is not a bus stop, where the accused were arrested and they went in a Police van and the statement was recorded inside the van and therefore, there are material contradictions between the evidence of PW6 and PW8 with regard to the place of arrest, the vehicle used and the manner in which, the statement was recorded from the accused. Out of those witnesses, PW6 is none other than the brother-in-law of the deceased Wilson.

41.Unfortunately in this case the Investigation Officer, who effected the arrest could not be examined during the trial. The investigation was conducted by one Shanmugamani, Inspector of Police and one Jacob another Inspector of Police, they both died during the trial and therefore, they could not be examined during the trial.

42.The arrest was effected by the Inspector of Police Jacob. But, PW15 who was examined on the role played by the Inspector of Police Jacob, was not aware of the period the Inspector of Police Jacob served in Arumanai Police Station. In the absence of the Investigation Officer, who effected the arrest in this case, coupled with the contradictions between the arrest and recovery witnesses PW6 and PW8 and also based on the evidence of PW11 Postmortem Doctor and PW1 the defacto complainant, the arrest and recovery in this case have not been proved by the prosecution.

43.As discussed above, the genesis to the case itself is doubtful. The case was registered at 8.30 pm on 10.04.2014. At the same time, the Sub Inspector of Police, who registered the FIR has also issued a passport to the Head Constable [PW14] in Exp18, wherein it is mentioned as Crime No.103 of 2004 was registered for the offence under Section 174 CrPC, the arrest and recovery has not been established by the prosecution and there are contradictions between the ocular evidence and the medical evidence and therefore, this Court is of the view that it is not safe to sustain the conviction as against these appellants.

44.In the result, this Criminal Appeal is allowed and the conviction and sentence awarded by the learned Sessions Court, Kanyakumari District at Nagercoil, vide impugned judgment dated 14.02.2015 in S.C.No.29 of 2005 are set aside and the appellants



are acquitted of the charges framed against them. Fine amount, if any, paid by them shall be refunded. The appellants are directed to be released forthwith, unless their custody is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1.The Sessions Judge,
Kanyakumari District at Nagercoil.

2.The Inspector of Police,
Arumanai Police Station,
Kanyakumari District.

3.The Additional Public Prosecutor,
Madurai Bench of Madurai High Court,
Madurai.

Crl.A(MD)No.111 of 2015

20.07.2020

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