

BAIL SLIP

Muthu, S/o.Pandi @ Kanja Pandi, Male, aged about 27 years/2019 (Accused No.1) was released on bail vide Court Order dated 11.07.2019 made in CRL MP(MD)No.6217 of 2019 in CRL A(MD). No.454 of 2018.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.02.2020

Delivered on: 01.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE **T.RAJA**
and
THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

Crl.A.(MD)Nos.453 and 454 of 2018

Crl.A.(MD) No.453 of 2018

Lakshmi ... Appellant / Accused No.2

versus

State,
Rep. by the Inspector of Police,
Allinagaram Police Station, Theni.
(Crime No.328/2015)

... Respondent

Appeal filed under Section 374 (2) of Criminal Procedure Code, against the Judgment dated 10.09.2018 made in S.C.No.17 of 2016 on the file of the learned Additional District (Fast Track) Judge, Theni.

Crl.A.(MD) No.454 of 2018

Muthu ... Appellant / Accused No.1

versus

State,
Rep. by the Inspector of Police,
Allinagaram Police Station,
Theni.
(Crime No.328/2015)

... Respondent

Appeal filed under Section 374 (2) of Criminal Procedure Code, against the Judgment dated 10.09.2018 made in S.C.No.17 of 2016 on the file of the learned Additional District (Fast Track) Judge, Theni.



For Appellant in both
Appeals :

Mr. K.Doraisamy
Senior Counsel
assisted by K.Saravanan for A1
Mr.G.Karuppasamy Pandian for A2

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For Respondent : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor(in Both Cases)

COMMON JUDGMENT

[Judgment of the Court was delivered by **B.PUGALENDHI, J.**]

The Appellant in Crl.A.(MD)No.453 of 2018 is the Accused No.2 and the Appellant in Crl.A.(MD)No.454 of 2018 is the Accused No.1 in S.C.No.17 of 2016 on the file of the Additional District [Fast Track] Court, Theni. Both the accused were tried for the offence under Section 302 r/w. 34 IPC. The trial Court, by its Judgment dated 10.09.2018, found the appellants / accused guilty for the offence under Sections 302 r/w. 34 IPC, convicted and sentenced them to undergo life imprisonment, with a fine of Rs.5,000/-, in default, to undergo six months simple imprisonment. Aggrieved over the same, the appellants have been preferred the instant appeals.

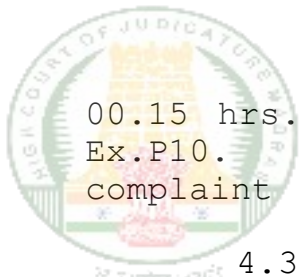
2. Since both the appeals arise out of the same Sessions Case, both the appeals are taken up together for hearing.

3. For the sake of brevity and clarity, the parties will be referred to as per rank before the trial Court.

4. The brief facts of the case are as follows:

4.1. The second accused is the wife of the deceased and they had two children, namely, Gokulapriya [PW3] and one Hariharan. The deceased was working in a Welding shop and the second accused was working in a Tiles shop. The first accused is also a relative of the deceased and the second accused.

4.2. Rathinam [PW1] is also a close relative of the deceased and an office bearer of the Community Association. In their Community Association, they proposed to construct a Temple and for that, they arranged for a Meeting on 09.06.2015 at 09.00 p.m. PW1, PW2 and PW4 to PW6 participated in the said meeting and the meeting went upto 11.30 p.m. At about 11.45 p.m., Balamurugan [PW2], Treasurer of the Community Association, informed Rathinam [PW1] that the deceased, Muniyandi, is lying with injuries and his wife / the second accused informed them that at around 11.30 p.m., somebody came to their house, attacked her husband and caused injuries. PW1 and others arranged for an ambulance and the injured / deceased was taken to the Government Medical College Hospital, Theni, where, he was admitted as in-patient by the Doctor [PW15] on 10.06.2015 at



00.15 hrs. and the Accident Register issued by PW15 is marked as Ex.P10. PW1 went to Allinagaram Police Station and lodged a complaint [Ex.P1].

4.3. Thiru. Janarthanam [PW18], Sub Inspector of Police, Allinagaram Police Station, received the complaint [Ex.P1] and registered a case for the offence under Section 307 IPC in Crime No.328 of 2015. The printed copy of the FIR is marked as Ex.P13. The same was received by the learned Judicial Magistrate, Theni on 10.06.2015 at about 04.00 p.m. PW18 has also informed about the registration of the case to his higher officials.

4.4. Thiru Sakthivel [PW19], Inspector of Police, Allinagaram Police Station, on receipt of First Information Report in Cr.No.328 of 2015, went to the place of occurrence around 05.30 a.m. On 10.06.2015, prepared the Observation Mahazar [Ex.P2] and Rough Sketch [Ex.P14] in the presence of PW10 and another. He also collected cement mortars with and without bloodstains [MOs.1 and 2 respectively] in the presence of the said witnesses and examined the witnesses, PW1, PW2, PW10 as well as the second accused and one Kabil Kumar, who were in the place of occurrence.

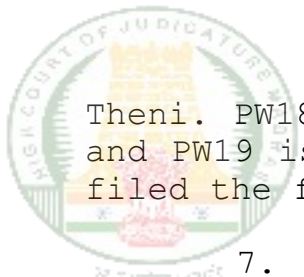
4.5. The deceased was referred to the Government Rajaji Hospital, Madurai, from Government Medical College and Hospital, Theni and while he was undergoing treatment at Government Rajaji Hosital, Madurai, he succumbed to the injuries on 11.06.2015 at about 01.00 p.m. On receipt of the information, the Investigation Officer [PW19] submitted an alteration report [Ex.P15] to the Judicial Magistrate, Theni, altering the offence to Section 302 IPC. He also conducted inquest at Government Rajaji Hospital, Madurai, on 11.06.2015 at about 10.30 a.m. and the inquest report is marked as Ex.P16. After completing the inquest, the Investigation Officer made a request for conducting postmortem through the Head Constable [PW13]. Dr.Sadasivam [PW16] conducted the postmortem on 11.06.2015 at about 02.40 p.m. and the Postmortem Certificate is marked as Ex.P11. The Doctor has noted down the antemortem injuries and also collected the viscera for examination. After collecting the chemical examination report, the Doctor [PW16] gave his final opinion in Ex.P12 that the deceased would appear to have died of head injury.

4.6. The Investigation Officer [PW19] arrested the accused persons at Theni Bye-pass Road on 13.06.2015 at about 09.00 a.m. in the presence of the Village Administrative Officer [PW11] and the Village Assistant, Marichamy. The first accused gave a voluntary confession statement and pursuant to the same, a bloodstained Aruval [MO3], T-shirt [MO4] and a Track suit [MO5] were recovered under a cover of mahazar from the heap of stones near the cattle shed in the first accused's house. The admissible portion of the confession statement is marked as Ex.P4. The second accused also gave a confession statement and pursuant to the same, a cell phone [MO6] was recovered under a cover of mahazar and the admissible portion of

the confession statement is marked as Ex.P6. The recovered material objects were sent for chemical analysis through the concerned Judicial Magistrate through the Head Constable [PW13]. The Biological Report is marked as Ex.P8 and the Serological Report is marked as Ex.P9 and they were marked through the Scientific Expert, Thiru Vijayendran [PW14]. After collecting the postmortem certificate, Serological Report, Biological Report and after examining the witnesses, the Investigation Officer [PW19] filed the final report on 09.09.2015 as against the appellants / accused under Sections 302 r/w. 34 IPC. The same was taken on file by the learned Judicial Magistrate, Theni, in PRC No.47 of 2015 and committed to the Court of Sessions. The learned Additional Sessions Judge, Fast Track Court, Theni, took the same on file, framed charges and proceeded with the trial in S.C.No.17 of 2016.

5. During the trial, on the side of prosecution, 19 witnesses were examined and 16 documents were marked besides six material objects.

6. PWs. 1 and 2 are the close relatives of the deceased and also the residents of the same village. They arranged the ambulance for the injured / deceased and PW1 lodged the complaint [Ex.P1] on the date of occurrence. PW3 is the daughter of the deceased and the second accused and she speaks about the illegal intimacy between the accused persons. PW4, who is also the resident of the village, stated that the second accused informed him about the assault of her husband. PW5 is the brother of the deceased. PW6 is another villager, who witnessed the first accused in the Meeting at about 11.00 a.m. and also at about 11.50 p.m., when the first accused accompanied the deceased to the Hospital. According to PW6, at the time of meeting, the first accused was wearing a T-shirt and Track suit and while proceeding to the hospital, he was in Dhoti. PW7 is a co-worker of the deceased and on the previous day, the deceased, Muniyandi, lamented him about the illegal relationship between the first accused and his wife / second accused. PW8 and PW9, who are the residents of the village, are hearsay witnesses. PW10 is the witness for the recovery of MOs.1 and 2 and the observation mahazar [Ex.P2] and rough sketch [Ex.P14] from the place of occurrence. PW11 is the Village Administrative Officer in whose presence the accused persons were arrested and the material objects, namely, MOs. 3 to 6, were recovered. PW12 is the Head-Clerk, who sent the material objects to chemical examination. PW13 is the Head Constable, who sent the body for postmortem and produced the material objects for chemical analysis. PW14 is the Scientific Expert, working in the Forensic Science Department, Madurai and through him, the Serological report [Ex.P9] was marked. PW15 is the Doctor, who admitted the deceased on 10.06.2015 and issued the Accident Register [Ex.P10]. PW16 is the Doctor, who conducted the postmortem and issued his report and final opinion on the cause of death in Exs.P11 and P12. PW17 is the Head Constable, who submitted the final report to the learned Judicial Magistrate,



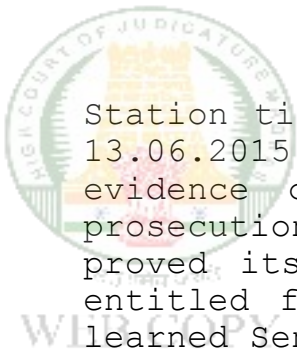
Theni. PW18 is the Sub Inspector, who registered the case in Ex.P13 and PW19 is the Investigation Officer, who arrested the accused and filed the final report.

7. After the prosecution evidence was closed, the incriminating materials were put to the accused under Section 313 Cr.P.C., but, the accused denied the same. Though the accused stated that there are witnesses on their side, neither any witness was examined nor any document was produced. In conclusion of trial, the trial Court found the appellants / accused guilty for the offence under Section 302 r/w. 34 IPC, convicted and sentenced them as stated supra. Aggrieved over the same, the present appeals are filed.

8. Heard Mr.K.Doraisamy, learned Senior Counsel assisted by Mr.K.Saravanan, learned Counsel for the first accused; Mr.G.Karuppasamy Pandian, learned counsel for the second accused; and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor for the State.

9. Learned Senior Counsel appearing for the first accused submitted that there is no eye witness to the occurrence and therefore, the case rests on the circumstantial evidence. But, the circumstances projected by the Prosecuting Agency are not having any link and do not establish the guilty against the accused. The learned Senior Counsel further submitted that when the deceased was found with injuries on 09.06.2015 in the open terrace and it is the admitted case of the prosecution that there are two tenants residing in the same building in the ground floor, those tenants were not examined by the prosecution. Similarly, according to the prosecution, the deceased and the second accused had two children, namely, Gokilapriya [PW3] and another son Hariharan and at the time of occurrence, the deceased's son, Hariharan, was also present in the house of the deceased, but, the said Hariharan was neither cited nor examined as a witness. Further, the deceased was taken to the hospital by one Ayyakalai, father of the deceased. According to the prosecution witnesses, the said Ayyakalai and his wife (mother of the deceased) were also residing in the same village near the deceased's house, but, both Ayyakalai and his wife were not examined. PW1, Rathinam, a close relative to the deceased, in his evidence, admitted the existence of a property dispute between the said Ayyakalai and the father of the first accused. Therefore, on the non-examination of the said Ayyakalai, an adverse inference can be drawn under Section 114 (g) of the Indian Evidence Act.

10. Learned Senior Counsel also pointed out that there is a discrepancy in the arrest of the accused. According to PW11 and PW19, the accused were arrested at Theni Bye-pass Road on 13.06.2015 at about 09.00 a.m., whereas PW1 stated that the first accused was taken to the Police Station on 12.06.2015 along with the co-workers of the deceased, but, the first accused was retained in the Police



Station till the second accused was taken to the Police Station on 13.06.2015 at about 01.50 a.m. and therefore, in view of the evidence of PW1, the arrest and recovery as projected by the prosecution is very doubtful. Therefore, the prosecution has not proved its case beyond any reasonable doubt and the accused are entitled for benefit of doubt. In support of his contention, the learned Senior Counsel relied upon the following Judgments:

- (i) 1974 L.W. (Crl.) 190 (Karunakaran Jabamani Nadar In Re)
- (ii) 2004 (2) CTC 338 (Mani vs. State by Circle Inspector of Police, Thiruvidadaimarudur);
- (iii) 2011 (1) MWN (Cr.) 151 (DB) (Shanmugam vs. State, rep. by Inspector of Police, Kanchi Taluk Police Station);
- (iv) 2011 (1) MWN (Cr.) 416 (DB) (Ramesh vs. The State by Inspector of Police, B4, Race Course Police Station, Coimbatore City);
- (v) 2012 (6) SCC 403 (Sahadevan and another vs. State of Tamil Nadu);
- (vi) 2013 (5) SCC 722 (Raj Kumar Singh @ Raju @ Batya vs. State of Rajasthan);
- (vii) 2013 (7) SCC 192 (Majenderan Langeswaran vs. State (NCT of Delhi) and another);
- (viii) 2013 (12) SCC 406 (Sujit Biswas vs. State of Assam);
- (ix) 2016 (10) SCC 519 (Jose @ Pappachan vs. Sub-Inspector of Police, Koyilandy and another);
- (x) 2016 (12) SCC 251 (Rambraksh @ Jalim vs. State of Chhattisgarh);
- (xi) 2017 (11) SCC 413 (Joitaabhai Maganlal vs. State of Gujarat);
- (xii) 2004 (9) SCC 193 (Kunju Muhammed @ Khumani and another vs. State of Kerala)

11. Mr.G.Karupphasamy Pandian, learned Counsel for the second accused, adopted the arguments made by the learned Senior Counsel for the first accused and also made his further submission that in a case based on circumstantial evidence, motive has to be established, but, the motive has not been established in this case. The Investigation Officer [PW19] has clearly stated that there is no evidence for the illegal intimacy between the accused persons. Though a cell phone [MO6] was recovered from the second accused pursuant to her confession statement, the prosecution has not recovered any call details and not examined the service provider. Further, the arrest of the second accused along with the first accused on 13.06.2015 at about 09.00 a.m. is also doubtful, in view of the evidence of PW1 that the first accused was taken to the Police Station on 12.06.2015 itself and the second accused was taken to the Police Station at small hours on 13.06.2015. Therefore, the learned counsel pleaded that the circumstances projected by the prosecution is not having any link which should form a chain to establish the guilt against the appellants/accused. In support of



following Judgments:

- (i) 2017 (1) MWN (Cr.) 161 (DB) - (Siva vs. State, rep. by Inspector of Police, Krishnagiri Taluk P.S., Krishnagiri District)
- (ii) 2019 (2) MWN (Cr.) 161 (DB) - (Kasthuri vs. State, through Inspector of Police, Gudiyatham Police Station, Vellore District)
- (iii) 2019 (2) MWN (Cr.) 487 (DB) - (Manickaraj vs. State, rep. by Inspector of Police, Alwarthirunagari Police Station, Thoothukudi District).

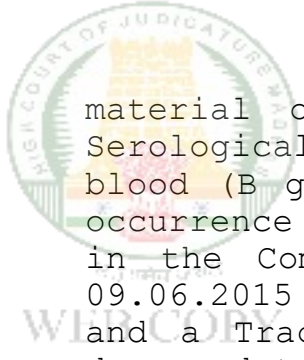
12. Per contra, Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor submitted that the available circumstances made out a case as against the appellants / accused without any break and establishes the guilty against the accused without any doubt. The learned Additional Public Prosecutor has also pointed out the following circumstances available in the prosecution case:

(i) The deceased / the second accused's husband was found with cut injuries in the open terrace of his house on 09.06.2015 at about 11.15 p.m. The second accused informed all other witnesses about the occurrence stating that an unknown person came to their house and attacked her husband.

(ii) At the time of occurrence, the second accused was available in the place of occurrence and the occurrence took place in her house. Hence, as per Section 106 of the Indian Evidence Act, the burden of proof is on the second accused to prove the fact that an unknown person attacked her husband and therefore, an adverse inference can be drawn as against the second accused.

(iii) The first accused is a close relative of the deceased and the second accused. In fact, he is the sister's son of the accused No.2 and he used to visit the house of the deceased often, particularly in the absence of the deceased. The first accused visited the house of the deceased on the date of occurrence. The second accused instructed her daughter [PW3] not to disclose the visit of the first accused to anybody. PW3, the daughter of the deceased and the second accused, has categorically stated in her evidence about the existence of illegal intimacy between the accused persons and the same is also corroborated through the evidence of PW7, a co-worker of the deceased. PW7, who was working with the deceased, in his evidence, has stated that on the previous date of occurrence, the deceased had consumed liquor while doing work and when he questioned the same, the deceased stated about the illegal relationship between his wife and the first accused.

(iv) The accused persons were arrested on 13.06.2015 and pursuant to the confession statement of the first accused, a bloodstained billhook [MO3], T-Shirt [MO4] and a Track Suit [MO5] were recovered from the house of the first accused. The recovered



material objects were also sent for chemical analysis and the Serological and Biological reports establish the presence of human blood (B group) in the cement mortars recovered from the place of occurrence and T-shirt [MO4]. PW6 has witnessed the first accused in the Community Meeting held on the occurrence date, i.e., on 09.06.2015 and at that time, the first accused was wearing a T-shirt and a Track suit. But, when the first accused accompanied the deceased to the Hospital, he changed his cloth and he was in Dhoti. The learned Additional Public Prosecutor has relied upon the decision of the Hon'ble Supreme Court in the case of **Gajanan Dashrath Kharate vs. State of Maharashtra** reported in **2016 4 SCC 604**.

13. This Court paid it's anxious consideration to the rival submissions made and also perused the materials available on record.

14. The husband of the second accused, namely, Muniyandi, was found with injuries in his house, while he was sleeping in the open terrace on 09.06.2015 at 11.15 p.m. The incident was disclosed to all the witnesses only through his wife / the second accused. According to the second accused, an unknown person committed the offence. Therefore, the case was originally registered as against the unknown person. Only after three days, the appellants were arrested and they were fixed as accused and admittedly, the case of the prosecution rests on the circumstantial evidence.

15. The Hon'ble Supreme Court in the case of **Padala Veera Reddy vs. State of A.P., 1991 SCC (Crl.) 407**, laid out the test which has to be adopted in dealing with cases of circumstantial evidence and the same is extracted as under:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no scope from the conclusion that within all human probability the crime was committed by the Accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the Accused and such evidence should not only be consistent with the guilt of the Accused, but should be inconsistent with his innocence".

16. Bearing in mind the Golden Rule laid down by the Hon'ble Supreme Court on deciding a case on circumstantial evidence, we



analysed the evidence carefully.

17. The deceased and the second accused are husband and wife and they had two children, namely, Gokilapriya [PW3] and one Hariharan. The first accused is the sister's son of the second accused and he used to visit the deceased's house often in the absence of the deceased and the same was witnessed by their daughter [PW3]. The second accused insisted her daughter [PW3] not to disclose about the visit of the first accused to anyone. Even on the date of occurrence, i.e. on 09.06.2015, the first accused met the second accused and the second accused requested her daughter [PW3] not to disclose the same to anyone.

18. On 09.06.2015 at about 11.15 p.m., the deceased was found lying with cut injuries in the open terrace of his house. On the information of the second accused, PWs.1 and 2 and other witnesses went to the place of occurrence, arranged for an ambulance and the deceased was taken to the Government Medical College and Hospital, Theni, on 10.06.2015 at 00.15 hrs. On the complaint of PW1, a case was registered by the Sub Inspector of Police [PW18]. The deceased was referred to the Government Rajaji Hospital, Madurai and died in the Government Rajaji Hospital, Madurai, on 11.06.2015 at about 01.00 a.m. The Doctor [PW16], who conducted the postmortem, in his postmortem report [Ex.P11], noted down the following ante mortem injuries:

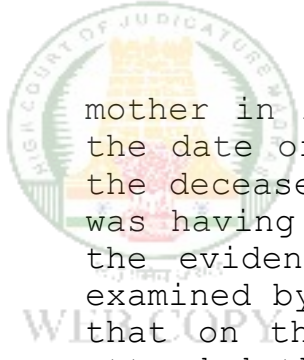
"1. Horizontal cut injury measuring 13cm x 2cm x brain deep noted on mid frontal region.

2. Horizontal cut injury 23cm x 4cm x brain deep noted on lower frontal region, 2cm below injury No.1, 3cm above both eyebrow through which portion of frontal lobe of brain found protruding out.

3. Cut injury measuring 5cm x 2cm x bone deep noted on outer aspect of left eye.

PW16 also gave his final opinion in Ex.P12 that the deceased would appear to have died of head injury. On 13.06.2015, the Inspector of Police [PW19] arrested both the accused, when they attempted to flee away to Kerala and recovered MOs.3 to 5 from the house of the first accused and sent the recovered material objects for chemical analysis. The Serological report [Ex.P9] reveals the presence of human blood (B Group) in cement mortars [MO1] recovered from the place of occurrence, Billhook [MO3] and T-shirt [MO4].

19. The learned Senior Counsel for the first accused has pointed out that though there were two tenants residing in the ground floor of the deceased's house, the prosecution has not examined those tenants and the parents of the deceased to establish the illegal intimacy, if any, between the accused persons. But, as pointed out by the learned Additional Public Prosecutor, the prosecution has examined the daughter of the deceased [PW3], who, in clear terms, stated about the visit of the first accused to their house often in the absence of her father and also the conduct of her



mother in insisting her not to disclose the same to any one and on the date of occurrence also, the first accused visited the house of the deceased at about 06.00 p.m. and she also stated that her mother was having illegal intimacy with the first accused. In addition to the evidence of PW3, a co-worker of the deceased [PW7] was also examined by the prosecution and he, in his evidence, has also stated that on the date of occurrence, i.e. on 09.06.2015, the deceased attended the duty in the welding shop, at that time, the deceased also consumed liquor and when he questioned as to why he consumed liquor while working, the deceased stated that he witnessed that his wife / second accused and the first accused wandering at Theni market and there is a rumour that his wife is having intimacy with the the first accused and therefore, there was a quarrel with his wife and therefore, he consumed liquor. The Doctor [PW15], who admitted the deceased in the hospital, has noted down the smell of alcohol from the deceased. Therefore, the prosecution, through the evidence of PW3 and PW7, established the illegal and prohibited relationship between the accused persons and the quarrel between the deceased and his wife on the date of occurrence. Therefore, the non-examination of the tenants or the parents of the deceased is no way affecting the case of the prosecution. PW3 is the own daughter of the second accused and the deceased and she was aged about 16 years at the time of occurrence and she is also having one brother, Hariharan. But, the age of the said Hariharan is not available. When PW3 has stated about the illegal intimacy between the accused persons, there is no need for establishing the same by examining the another child witness, Hariharan.

20. The motive is an essential factor in a case of circumstantial evidence. As per the evidence of PW7, the deceased himself had witnessed the accused persons together and he also heard about their illegal relationship and therefore, there was a quarrel between the deceased and his wife / second accused on the date of occurrence and without bearing the same, the deceased consumed liquor while doing his work at welding shop and in the night hours, he was done to death with cut injuries. The occurrence was taken place on 09.06.2015 at about 11.15 p.m. in a village and on the information from the second accused, the villagers arranged 108 ambulance and took the injured / deceased to the Government Medical College and Hospital, Theni, where, he was admitted as in-patient on 10.06.2015 at 00.15 hrs., within a hour from the time of occurrence. From there, he was referred to Government Rajaji Hospital, Madurai, where, he succumbed to injuries on 11.06.2015 at about 01.00 p.m. Dr.Sadhasivam [PW16], who conducted autopsy, noted down the cut injuries on the deceased and also gave his final opinion that the deceased would appear to have died of head injury. Further, PW16 in his evidence stated that the cut injuries found on the deceased would have caused through a weapon like Billhook [MO3], recovered from the first accused.

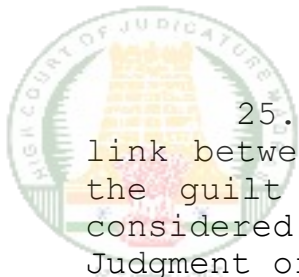


21. According to the prosecution, the accused persons together were found at Theni Bye-pass Road and when they attempted to flee away to Kerala, they were arrested by the Inspector of Police [PW19] in the presence of the Village Administrative Officer [PW11]. The first accused gave a voluntary confession statement and pursuant to the same, MOs.3 to 5 were recovered from a heap of stones found near the cattle shed near his house under a cover of recovery mahazar (Ex.P3 and Ex.P5). The admissible portion of the confession statement of the first accused leading to recovery of the aforesaid material objects is marked as Ex.P4.

22. The Investigation Officer recovered the cement mortars with bloodstains and without bloodstains from the place of occurrence and the recovered articles, namely, MOs.1 to 5 were sent for chemical analysis through the concerned Judicial Magistrate. The Biological report is marked as Ex.P8 and the Serological report is marked as Ex.P9. As per the reports, human blood (B group) is detected in the cement mortars recovered from the place of occurrence [MO1], Billhook [MO3] and T-shirt [MO4] recovered from the first accused. Though human blood was deducted in the Track suit [MO5], it was found to be disintegrated.

23. PW6, a resident of the same village, had also witnessed the first accused on the date of occurrence around 11.00 p.m. in the Community meeting and at that time, the first accused was wearing a black colour T-shirt and a Track suit. He also witnessed that the first accused accompanying the deceased to the Hospital in the ambulance and at that time, the first accused was wearing Dhoti and Shirt. The Investigation Officer recovered the Track suit and T-Shirt worn by the first accused at the time of occurrence with bloodstains, which were sent for chemical analysis and the presence of human blood (B group) found in the cement mortars recovered from the place of occurrence [MO1] tallied with that of the blood group found in MOs.3 and 4. The Lungi [MO5] worn by the deceased at the time of occurrence was also recovered with bloodstains and the same was also sent for chemical analysis. Though the human blood (B group) was deducted in the Lungi of the deceased, the same was not marked by the prosecution.

24. Though there is no delay in registering the complaint [Ex.P1], the printed FIR reached the Court on 10.06.2015 at 04.00 p.m. But, the endorsement of the learned Judicial Magistrate is not clear as to whether it is 04.00 p.m. or 04.00 hours. Neither the prosecution nor the defence has elicited the delay by examining the witnesses. Even if it is considered as a delay, it will not cause any prejudice to the accused, when the FIR was registered as against unknown person. Further, the arrest of the accused on 13.06.2015 at about 9.00 a.m. and the recovery from the accused were established through the Village Administrative Officer [P.W.11].



25. The aforesaid evidences / circumstances establish a close link between each other and they are cogent and complete, pointing the guilt towards the accused persons. Therefore, we are of the considered opinion that there is no reason to interfere with the Judgment of the trial Court.

26. Accordingly, both the Criminal Appeals are dismissed and the conviction and sentence imposed by the trial court vide judgment dated 10.09.2018 in S.C. No.17 of 2016 is confirmed. Bail bonds executed by the accused at the time of suspension of sentence shall stand cancelled and the trial court is directed to take necessary steps to secure the custody of the accused to undergo the remaining period of the sentence. The period of incarceration, if any, already undergone by accused during the course of investigation shall be set off in terms of Section 428 Cr.P.C.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. THE JUDICIAL MAGISTRATE, THENI.
2. THE CHIEF JUDICIAL MAGISTRATE, THENI.
3. THE ADDITIONAL DISTRICT (FAST TRACK) JUDGE, THENI.
4. THE SUPERINTENDENT, CENTRAL PRISON, MADURAI
5. THE SUPERINTENDENT, SPECIAL PRISON FOR WOMEN, MADURAI.
6. THE INSPECTOR OF POLICE, ALLINAGARAM POLICE STATION, THENI.
7. THE DISTRICT COLLECTOR, THENI.
8. THE SUPERINTENDENT OF POLICE, THENI.
9. THE DIRECTOR GENERAL OF POLICE, MYLAPORE, CHENNAI 600 004.
10. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

Copy to

The Record Keeper, Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

+1 CC to M/s.MUTHUMANI DORAISAMI, Advocate (SR-18638[F] dated 01/10/2020)

Judgment in
Crl.A.(MD)Nos.453 and 454 of 2018
01.10.2020

ns (CO)

TR(29.10.2020) 12P 14C