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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MS. JUSTICE R.N.MANJULA

Criminal Appeal Nos.429, 450 and 544 of 2020

Ramesh
S/o.Perumal ..Appellant in Cr1.A.No.429/2020/2nd Accused

N.Ramesh
S/o.Nataraj .. Appellant in Cr1.A.No.450/2020/1st Accused

R.Vimalraj
S/o.Rajendran .. Appellant in Cr1.A.No.544/2020/3rd Accused

Vs.

State represented by
The Assistant Commissioner of Police,
L&O, North Range,
Salem City.
[Veeranam Police Station
Crime No.251/2014] .. Respondent in all appeals

Common Prayer:

Criminal Appeals filed u/s.374(2) of the Code of Criminal Procedure against the judgment and order dated 18.09.2020 passed in S.C.No.262 of 2015 on the file of learned Principal Sessions Judge (Special Court of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989) Salem.

For Appellants : Mr.C.Emilias
for Mr.F.Wellington [Cr1.A.No.429/2020]
Mr.C.Sivakumar [Cr1.A.No.450/2020]
Mr.E.C.Ramesh [Cr1.A.No.544 of 2020]

For Respondent : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor
[in all appeals]



COMMON JUDGMENT

[Judgment of the Court was delivered by P.N.PRAKASH, J]

As all these appeals arise out of one and the same judgment, they are considered and decided by this common judgment.

2. These criminal appeals are directed against the judgment and order of conviction and sentence dated 18.09.2020 passed by the learned Principal Sessions Judge (Special Judge of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989), Salem, in S.C.No.262 of 2015.

3. The prosecution story runs thus:

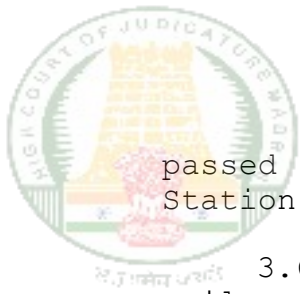
3.1. Regina (deceased) was married to Ramesh [A1] 12 years prior to the date of occurrence (date of occurrence being 30.07.2014) and through the wedlock, they were blessed with two children. After the birth of second child, Ramesh [A1] deserted Regina and got married to one Malathi. Malathi died in suspicious circumstances, in connection with which, Ramesh [A1] was prosecuted for murder, but, he was acquitted in that case. Ramesh [A1], his mother Mani [PW-1] and his sister Selvi [PW-2] were residing in Sathya Nagar, North Krishnanputhur village.

3.2. Regina was also residing nearby with her two children. Regina used to go as a daily wagger in construction sites and at the relevant point of time, she is said to have worked under Balu [PW-6] and Sathish [PW-17]. Though Ramesh [A1] got estranged from Regina, the family members of Ramesh [A1] were very cordial with Regina.

3.3. It is alleged that Ramesh [A1] developed intimacy with one Thangam and wanted to get married to her. This was resented to by Regina, on account of which, it is alleged that Ramesh [A1] and Thangam had, in a quarrel, vowed to get rid of Regina. This was projected as the motive for the offence in this case.

3.4. While so, on 30.07.2014, Ramesh [A1], Ramesh (A2), Vimalraj (A3), Thangam and Vignesh (juvenile accused) met in a cremation ground outside the village in the afternoon, consumed liquor and conspired to liquidate Regina, pursuant to which, they abducted Regina from her work place in the evening in a Tata Indica car bearing Registration No.TN-55-Z-5193 [MO-16], murdered her by strangulation and discarded her body on the railway track between Minnampalli Railway Station and Salem Town Railway Station.

3.5. The body of Regina was first noticed by Govindan [PW-12], the Railway Gang Mastry, at 07.30 a.m. on 31.07.2014, who



passed on the information to Rakeshkumar [PW-32], Assistant Station Master, Minnampalli Railway Station.

3.6. Inquest over the body of Regina was conducted by the railway police and the body was sent to the Government Mohan Kumaramangalam Medical College and Hospital, Salem, where the body of Regina was kept in the mortuary.

3.7. On a written complaint [Ex.P39] given by Rakeshkumar [PW-32], Assistant Station Master, which was forwarded by Jayaraman [PW-33], Assistant Manager, Salem Junction, to the railway police, a case in Salem Railway P.S.Crime No.524 of 2014 u/s.174 Cr.P.C. was registered on 31.07.2014 at 9.00 hours and the printed First Information Report was marked as Ex.P40.

3.8. Since Regina did not return home from work, Mani [PW-1], Selvi [PW-2] and other relatives started searching for her and ultimately, Mani [PW-1] gave a written complaint [Ex.P45] on 31.07.2014, based on which, Angappan [PW-35], Sub-Inspector of Police, registered a case in Veeranam P.S.Crime No.251/2014 for 'woman missing' at 23.00 hours and prepared the printed First Information Report [Ex.P46].

3.9. Since the identity of the body was unknown, the railway police passed on the information to the local police stations and the photograph of Regina was also given publicity. On seeing that, Selvi [PW-2], sister-in-law of Regina and sister of Ramesh [A1], along with other family members, approached the railway police on 03.08.2014 and with their help, she and other relatives identified the body of Regina at the mortuary.

3.10. Dr.Padmavathi [PW-25] conducted autopsy on the body of Regina and issued the postmortem certificate [Ex.P32], wherein, she has noted 15 injuries and has ultimately opined as follows:

'OPINION:- Died of effects of multiple crush injuries with evidence of compression over the neck.
Time since death: 2 to 3 days prior to autopsy.'

3.11. Since the postmortem findings disclosed the possibility of homicide, the railway police altered the case on 03.08.2014 from one u/s.174 Cr.P.C. to one u/s. 174 Cr.P.C. (suspicious death) vide alteration report Ex.P54.

3.12. It may be relevant to state here that there was decapitation at the level of the neck and the head portion from the neck region was found separated from the body portion. Since Dr.Padmavathi [PW-25] observed evidence of compression over the neck, the case was transferred from the file of railway police to the file of Inspector of Police, Veeranam Police Station



where the case was re-registered as Crime No.251/2014 for an offence u/s.302 IPC.

3.13. On the identification of the body of Regina by her relatives, the investigation of the case was taken over by Nagarajan [PW-39], Inspector of Police, Veeranam Police Station.

3.14. Till 04.08.2014, the police were clueless as to who the perpetrator was. On 05.08.2014, Vimalraj [A3], Thangam and Vignesh [juvenile accused] surrendered before Govindaraj [PW-7], Village Administrative Officer and each of them gave separate extra judicial confessions, which were marked as Ex.P5 [Thangam], Ex.P6 [Vimalraj - A3] and Ex.P7 [Vignesh - juvenile accused].

3.15. In the confession statements, Vimalraj [A3], Thangam and Vignesh [juvenile accused] stated that they planned with Ramesh [A1] and Ramesh [A2] to get rid of Regina as Ramesh [A1] wanted to get married to Thangam. Pursuant to the conspiracy, they abducted Regina from her work place in SK Towers in a car, strangled her and threw the body on the railway track so as to make it appear as if she had died in a rail accident.

3.16. After recording the extra judicial confessions, Govindaraj [PW-7], V.A.O., took all three of them and produced them before Nagarajan [PW-39], Inspector of Police, who formally arrested them and recorded their police confessions. Ramesh [A1] was arrested by the police on 11.08.2014 and based on his confession, the Tata Indica car [MO-16] was recovered under the cover of a mahazar [Ex.P14] from the residence of Ramesh [PW-13]. Apart from that, the police also recovered a winding wire [MO-15] under the cover of a mahazar [Ex.P13] based on the disclosure statement of Ramesh [A1].

3.17. The police arrested Ramesh [A2] on 07.11.2014 and from his possession, a knife [MO-20] was recovered under the cover of a mahazar [Ex.P27].

3.18. Since Regina was a Dalit, the investigation of the case was taken over by Uthayakumaran [PW-40], Assistant Commissioner. The community certificate showing that Regina was a Dalit and Ramesh [A1] is a non-Dalit was obtained. The investigation revealed that Ramesh [A2], Vimalraj [A3] and Vignesh [juvenile accused] are Dalits and Thangam was a non-Dalit.

3.19. It appears that during the course of investigation, Thangam died on 19.04.2015. The case against Vignesh [juvenile accused] was spilt up and his case was sent to the Juvenile Justice Board to be dealt with in accordance with law.



3.20. After examining various witnesses and collecting the reports of the experts, Uthayakumaran [PW-40], Assistant Commissioner of Police, filed a final report in PRC No.16 of 2015 in the Court of the Judicial Magistrate (Additional Mahila Court) Salem, against Ramesh [A1] for the offences u/s.120-B, 364, 302 IPC r/w 34, 201 IPC r/w 302 IPC and 3(2)(v), 3(2)(vi) of the SC/ST (POA) Act and against Ramesh [A2] and Vimalraj [A3] for the offences u/s.120-B, 364, 302 IPC r/w 34, 201 IPC.

3.21. On appearance of the appellants, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.262 of 2015.

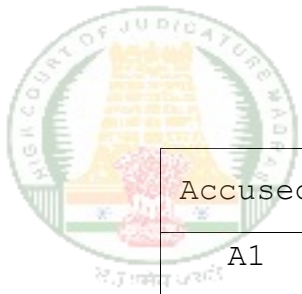
3.22. The Sessions Court, which is also the Special Court for trial of cases under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, framed charges u/s.120-B, 364 and 201 r/w 302 IPC against Ramesh [A1], Ramesh [A2] and Vimalraj [A3] and an additional charge u/s.302 r/w 3(2)(v) of the SC/ST (POA) Act was framed against Ramesh [A1] as he is a non-Dalit and charge u/s.302 r/w 34 IPC was framed against Ramesh [A2] and Vimalraj [A3]. When questioned, the appellants pleaded 'not guilty'.

3.23. To prove the case, the prosecution examined 40 witnesses and marked 65 exhibits and 20 material objects.

3.24. When the appellants were questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same.

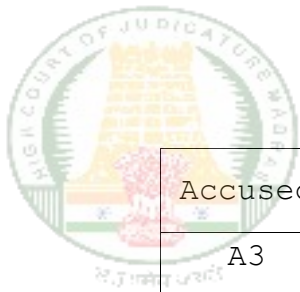
3.25. From the side of the accused, one Raja, the brother of Thangam, was examined as DW-1. Ex.C1, viz., the signature of the father of DW-1 in the arrest memo of A1, was marked.

3.26. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 18.09.2020 in S.C.No.262 of 2015, convicted and sentenced the appellants as follows :



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Accused	Provision under which convicted	Sentence
A1	Section 120(B) r/w S.302 IPC r/w S.3(2)(v) of SC/ST (POA) Act	Life imprisonment and fine of Rs.1,000/-, in default, to undergo 4 years rigorous imprisonment.
	Section 364 IPC r/w S.3(2)(v) of SC /ST (POA) Act	Life imprisonment and fine of Rs.1,000/-, in default, to undergo 4 years rigorous imprisonment.
	Section 302 IPC r/w S.3(2)(v) of SC/ST (POA) Act	Life imprisonment and fine of Rs.1,000/-, in default, to undergo 4 years rigorous imprisonment.
	Section 201 r/w S.302 IPC	3 years rigorous imprisonment and fine of Rs.1,000/-, in default, 9 months rigorous imprisonment.
	Section 3(2)(vi) of SC/ST (POA) Act	3 years rigorous imprisonment and fine of Rs.1,000/-, in default, 9 months rigorous imprisonment.
A2	Section 120(B) r/w 302 IPC	Life imprisonment and fine of Rs.1,000/-, in default, to undergo 4 years rigorous imprisonment.
	Section 364 IPC	10 years rigorous imprisonment and fine of Rs.1,000/-, in default, to undergo 2½ years rigorous imprisonment.
	Section 302 r/w 34 IPC	Life imprisonment and fine of Rs.1,000/-, in default, to undergo 4 years rigorous imprisonment.
	Section 201 r/w 302 IPC	3 years rigorous imprisonment and fine of Rs.1,000/-, in default, 9 months rigorous imprisonment.



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Accused	Provision under which convicted	Sentence
A3	Section 120(B) r/w 302 IPC	Life imprisonment and fine of Rs.1,000/-, in default, to undergo 4 years rigorous imprisonment.
	Section 364 IPC	10 years rigorous imprisonment and fine of Rs.1,000/-, in default, to undergo 2½ years rigorous imprisonment.
	Section 302 r/w 34 IPC	Life imprisonment and fine of Rs.1,000/-, in default, to undergo 4 years rigorous imprisonment.
	Section 201 r/w 302 IPC	3 years rigorous imprisonment and fine of Rs.1,000/-, in default, 9 months rigorous imprisonment.

3.27. Challenging the aforesaid conviction and sentences, the accused are before this Court in these appeals.

4. Heard Mr.C.Emalias, learned counsel appearing for the appellant in CrI.A.No.429/2020, Mr.C.Sivakumar, learned counsel appearing for the appellant in CrI.A.No.450/2020, Mr.E.C.Ramesh, learned counsel appearing for the appellant in CrI.A.No.544 of 2020 and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor, appearing for the respondent State.

5. The case of the prosecution mainly rests on the extra judicial confession of Vimalraj [A3] and circumstantial evidence.

6. With regard to circumstantial evidence, it is profitable to refer to the following passage from the Constitution Bench judgment of the Supreme Court in Govinda Reddy and another vs. State of Mysore¹:

"In cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn would in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a

¹ AIR 1960 SC 29



conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

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7. In the context of circumstantial evidence, it is also useful to refer to the following five classic rules reiterated in Shaik Mustan Vali vs. State of Andhra Pradesh²:

"(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

8. Bearing in mind the principle enunciated by the Constitution Bench of the Supreme Court in the judgment referred to supra, we propose to deal with each of the circumstances in this case.

9. At the outset, the learned counsel for the defence stated that they are not disputing the identity of Regina, but it is their contention that Regina committed suicide or inter alia even if this Court comes to the conclusion that the death of Regina was a homicide, the appellants herein were not responsible for it. Thus, the discovery of the body of Regina from the railway track and its subsequent identification by the relatives of Regina are not in dispute in this case.

10. The prosecution relies upon the following circumstances:

(i) the testimonies of Selvi [PW-2]/sister of Ramesh [A1] and Kumaran [PW-5]/husband of Selvi [PW-2], who have spoken about the motive.

(ii) the testimonies of Balu [PW-6] and Sathish [PW-17], who have stated that Regina told them that she is going with her husband and left the work place.

² (2007) 9 SCC 342



(iii) the testimony of Madhu [PW-11], who is said to have overheard the accused conspiring (between 4.30 and 5.00 p.m. on 30.05.2014) in the Pallipattu cremation ground for eliminating Regina.

(iv) the testimony of Govindharaj [PW-19], who is said to have seen Regina getting into the car, in which the accused were there, at the Minnampalli railway gate at 06.30 p.m. on 30.07.2014.

(v) the testimonies of Ponnusamy [PW-16] and Abubakkar [PW-18], who had seen Regina in the company of the accused in a tea shop at 07.45 p.m. on 30.07.2014.

(vi) the extra judicial confession [Ex.P6] of Vimalraj [A3].

(vii) recovery of the Tata Indica car on the confession of Ramesh [A1].

11. At the outset, Mr.C.Emalias, learned counsel appearing for Ramesh [A1], took us through the evidence of Dr.Padmavathi [PW-25], who conducted postmortem and submitted that she conducted the postmortem on 03.08.2014 and in the cross-examination, she has clearly admitted that it will not be possible to find out if the compression around the neck was by hands or by rope when postmortem is done two days later; she has also admitted in the cross-examination that the injuries found on the body of Regina could occur even on account of passing of trains over the body of Regina.

12. We have carefully examined the evidence of Dr.Padmavathi [PW-25]. Admittedly, the occurrence was between the night of 30.07.2014 and daybreak of 31.07.2014 and the postmortem was conducted only on 03.08.2014. A specific questionnaire [Ex.P31] has been given to Dr.Padmavathi [PW-25] to state as to whether she had observed any ante-mortem injuries, for which Dr.Padmavathi [PW-25] has not given any reply. Based on the contusion found on the decapitated neck, Dr.Padmavathi [PW-25] has opined that there was compression in the neck. In the absence of any categorical evidence as to the existence of ante-mortem injuries on the body of Regina, we are unable to persuade ourselves to rely on the contusion alone to come to a conclusion that there was strangulation, especially, in the light of the answers given by Dr.Padmavathi [PW-25] in the cross-examination, which we have alluded to above.

13. Now, let us discuss the circumstances enumerated above:

13.1. Circumstance No.(i) : the testimonies of Selvi [PW-2]/sister of Ramesh [A1] and Kumaran [PW-5]/husband of Selvi [PW-2], who have spoken about the motive.



13.1.1. The testimonies of Selvi [PW-2] and Kumaran [PW-5] are to the effect that Ramesh [A1] got estranged from his wife Regina, got married to Malathi, who died in suspicious circumstances, for which Ramesh [A1] was prosecuted, but, eventually acquitted; Ramesh [A1] had developed intimacy with Thangam and wanted to marry her, due to which, there were misunderstandings between Ramesh [A1] and Regina; Selvi [PW-2] was warning Regina not to get once again attached to Ramesh [A1], but Regina refused to heed to her advice; on 30.07.2014, Regina went for work, called Selvi [PW-2] at 6.30 p.m. over phone and told her that she is going with her husband Ramesh [A1] for shopping by car; since Regina did not return home in the night, her daughter Swathi [PW-4] called Regina over phone and at that time, Regina told her that she is in a textile shop; after that, Regina did not return home and they all searched for her the next day; on 31.07.2014, Selvi [PW-2], went along with her mother Mani [PW-1] and gave a written complaint [Ex.P45], based on which, the police registered a 'woman missing' First Information Report in Crime No.251 of 2014 vide Ex.P46.

13.1.2. A reading of the complaint [Ex.P45] does not show that Regina told Selvi [PW-2] that she is going with her husband for shopping. It merely states that, when contacted, Regina told them that she is in a shop for purchasing dress for her daughter. Had Regina informed Selvi [PW-2] that she is going for shopping with her husband, the needle of suspicion would have pointed to Ramesh [A1] at the very inception. As stated above, none suspected the involvement of Ramesh [A1] till 05.08.2014 when Thangam, Vimalraj [A3] and Vignesh [juvenile accused] surrendered before Govindaraj [PW-7], V.A.O. and gave their confession. Therefore, we are unable to place much credence on the testimonies of Selvi [PW-2] and Kumaran [PW-5] that Regina told them that she was going for shopping with her husband.

13.2. Circumstance No.(ii) : the testimonies of Balu [PW-6] and Sathish [PW-17], who have stated that Regina told them that she is going with her husband and left the work place.

13.2.1. On the same grounds [circumstance No.(i)], we are unable to place much reliance on the testimonies of Balu [PW-6] and Sathish [PW-17] under whom Regina was working on the fateful day. Assuming for a moment that Regina did tell these four witnesses that she was going for shopping with her husband, that, by itself, would not prove the fact that she had indeed gone for shopping with her husband [Ramesh (A1)].

13.3. Circumstance No.(iii) : the testimony of Madhu [PW-11], who is said to have overheard the accused conspiring (between 4.30 and 5.00 p.m. on 30.05.2014) in the Pallipattu



cremation ground for eliminating Regina.

13.3.1. The testimony of Madhu [PW-11] is to the effect that on 30.05.2014, between 4.30 and 05.00 p.m., while he was passing through the Pallipattu cremation ground, he saw and heard Ramesh [A1] and four others including a lady talking to themselves for eliminating Regina; he heard some sound at a distance of 25 feet away and out of curiosity, he went there and heard their conversations.

13.3.2. A reading of the testimony of Madhu [PW-11] sounds unbelievable inasmuch as seldom would conspiracy be entered into publicly by loud conversations. The very essence of conspiracy is secrecy. It may be pertinent to state here that both in the chief-examination as well in cross-examination, this witness has stated that he overheard the conversation on 30.05.2014 when actually the prosecution case was that the accident had taken place on 30.07.2014. Hence, we are unable to place much reliance on his evidence to infer that the accused had entered into conspiracy in the cemetery to the hearing of others for eliminating Regina.

13.4. Circumstance No.(iv): the testimonies of Govindharaj [PW-19], who is said to have seen Regina getting into the car, in which the accused were there, at the Minnampalli railway gate at 06.30 p.m. on 30.07.2014.

13.4.1. Govindharaj [PW-19], in his evidence, has stated that on 30.07.2014 around 06.30 p.m., while he was near a railway gate, he saw a lady getting into a Tata Indica car, in which three persons were seated; thereafter, he saw in the newspaper the photo of the body of the lady on 06.08.2017, based on which he connected the dots and went on his own to the police station and gave a statement. However, in the witness box, he has stated that he does not remember whether the persons standing in the dock were the occupants of the car. It was not the case of this witness that he knew the accused earlier. The police have not conducted any Test Identification Parade for this witness to identify whether the accused were the three persons, who were the occupants of the car. Thus, in the absence of conduct of Test Identification Parade as well in the light of the failure of Madhu [PW-11] to identify the accused in the dock, his evidence would be of no avail to the prosecution.

13.5. Circumstance No.(v) : the testimonies of Ponnusamy [PW-16] and Abubakkar [PW-18], who had seen Regina in the company of the accused in a tea shop at 07.45 p.m. on 30.07.2014.



13.5.1. Coming to the testimonies of Ponnusamy [PW-16] and Abubakkar [PW-18], it is seen that Ponnusamy [PW-16] turned hostile and did not support the prosecution case.

13.5.2. Abubakkar [PW-18], in his evidence, has stated that on 30.07.2014 while he and Ponnusamy [PW-16] were drinking tea in a tea shop in Ayodiyapattinam around 07.45 p.m., a grey colour Tata Indica car came to the tea shop from which four persons (one female and three males) got down, had tea and left. He identified the three accused in the dock as the persons, who came in the car. In the chief-examination itself, he has stated that while he was in the tea shop, the same persons returned around 9'o clock on 30.07.2014 and at that time, the lady, who was earlier with them, was not there; two days later, he saw in the newspaper a news item relating to this case and went to the police station on 06.08.2014 along with Ponnusamy [PW-16] and gave a statement. It is not the case of this witness that the accused were earlier known to him. It is his case that he saw them coming to the tea shop in the evening around 07.45 p.m. No Test Identification Parade was conducted qua this witness for identifying the accused. What perplexes us is that how he witnessed the accused returning to the same tea shop at 9'o clock without the lady. Yet another noteworthy feature is that this witness, who came as a customer to drink tea, appears to have remained in the tea shop for over two hours though he was a tailor by profession and his house was nowhere near the tea shop. Through his evidence, the prosecution wants this Court to believe that the accused went around the village with Regina, exposed themselves and their victim to all and sundry, eliminated her and came back to the same tea shop thereafter. All these defy common sense, logic and credulity.

13.6. Circumstance No.(vi) : the extra judicial confession [Ex.P6] of Vimalraj [A3].

13.6.1. Coming to the extra judicial confession [Ex.P6] of Vimalraj [A3], he has stated about the motive and other stories. With regard to the actual commission of offence, he has merely stated that they all murdered Regina and threw her body in the railway track. This is a generalised extra judicial statement and not an unequivocal one. It will be dangerous to place sole reliance upon this vague extra judicial confession to mulct criminal liability on the maker viz., Vimalraj [A3] and as regards the co-accused, it can be used as an evidence only in terms of Section 30 of the Evidence Act and not as a substantive evidence. We are not placing any reliance on the extra judicial confession [Ex.P6] of Vimalraj [A3] for mulcting criminal liability on the accused.



13.7. Circumstance No.(vii) : recovery of the Tata Indica car on the confession of Ramesh [A1].

13.7.1. Coming to the recovery of Indica car [MO-16], we find that the prosecution has not submitted any record whatsoever to show that Ramesh [PW-13] was the owner of the car. Ramesh [PW-13], in his evidence, has stated that he is the owner of the Indica car and that he had given his car to his younger brother Suresh [PW-14] for his use as a public carrier. He has, however, stated that the car is under hypothecation with Shriram Finance. Nothing prevented the prosecution from producing the RC Book or any other document to establish that Ramesh [PW-13] was the owner of the car. However, Ramesh [PW-13] has not, in any way, implicated any of the accused. It is Suresh [PW-14], who, in his evidence, has stated that he had taken the car from his brother Ramesh [PW-13] and was using it; that on 30.07.2014 Ramesh [A2], who was known to him earlier, telephoned him and asked him to bring the car saying that he [A2] wants to go for a function; Ramesh [A2] further asked him to bring the car near a location viz., Pallipattu cremation ground and accordingly, when he went there between 3.00 and 3.30 p.m., Ramesh [A2] told him that he is going for the function on the next day and asked him to leave the car and go; accordingly, Suresh [PW-14] handed over the key to Ramesh [A2] and left; since the car was not returned, Suresh [PW-14] called Ramesh [A1] and enquired with him, for which Ramesh [A1] asked him to come near the military road rountana, where he handed over the car on the next day.

13.7.2. In the cross-examination, this witness [PW-14] has clearly stated that he knows nothing about Ramesh [A1]; he is the driver-cum-owner of a private car, which he uses for business purposes for ferrying customers; he is not in the business of giving out cars for hire; Ramesh [A2] called for the car and he handed over the car to Ramesh [A2] and left for his use; thereafter, when he did not get back the car, he strangely contacted Ramesh [A1] instead of Ramesh [A2]; it was Ramesh [A1], who came to military road rountana and handed over the car to him. In the chief-examination, he had stated that Ramesh [A2] called him in the afternoon of 30.07.2014 to bring the car to a place near Pallipattu cremation ground. However, in the cross-examination, he has stated that Ramesh [A2] called him on 31.07.2014 in the morning around 6.00 to 6.30 a.m. and asked him to bring the car. He has categorically stated in the cross-examination that around 06.40 in the morning of 30.07.2014, he had taken the car to the place where Ramesh [A2] had asked him to come. According to the prosecution, the car was recovered from the house of Suresh [PW-14] on the alleged disclosure of Ramesh [A1] and not on the disclosure of Ramesh [A2].



13.7.3. For the aforesaid reasons, we are unable to give credence to the testimonies of Ramesh [PW-13] and Suresh [PW-14] that their car was used by the accused.

14. Further, we find that the evidence adduced by the prosecution in this case does not pass muster the test laid down by the Constitution Bench of the Supreme Court in Govinda Reddy's case (supra) and as a sequel, these appeals deserve to be allowed.

In the result, these Criminal Appeals are allowed and the appellants are acquitted of all charges. The conviction and sentences passed in S.C.No.262 of 2015 on the file of the Principal Sessions Judge (Special Judge of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989), Salem, vide judgment and order dated 18.09.2020, are set aside. Fine amount, if any, paid by the appellants shall be refunded. The appellants are directed to be released forthwith, unless their presence/custody is required in connection with any other case/proceedings.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gm

To

1. The Principal Sessions Judge,
(Special Court of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989)
Salem.
2. The Assistant Commissioner of Police,
L&O, North Range,
Salem City.
3. The Superintendent,
Central Prison,
Coimbatore.
4. The Superintendent,
Central Prison, Salem.



5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.Sivakumar, Advocate Sr No.44495
+1cc to Mr.E.C.Ramesh, Advocate Sr No.44980

Criminal Appeal Nos.429, 450 and 544 of 2020

NR (CO)
PR (17/09/2021)