



BAIL SLIP

The Appellants namely Settu @ Puniameen, S/o.Mohammed Farooq (Crl.A.No.466/2019) and Sakthivel, S/o.Kalimuthu, (Crl.A.No.680/2019) was accused in S.C.No.101/2013 in Cr.No.941/2012 were directed to be released on bail as per order of this court dated 08.11.2019 in Crl.M.P.No.10211/2019 in Crl.A.No.466/2019 dated 27.11.2019 in Crl.M.P.No.14415/2019 in Crl.A.No.680/2019 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 01.12.2021.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.Nos.466 & 680 of 2019

1. Settu @ Puniameen ...Appellant/Accused No.2 in
Crl.A.No.466 of 2019

2. Sakthivel ...Appellant/Accused in Crl.A.No.680
of 2019

vs.

The State represented by its
The Inspector of Police,
Mayiladuthurai Police Station,
Mayiladuthurai Post,
Nagapatinam District.
(Crime No.941 of 2012)

...Respondent in both cases

Criminal Appeals filed under Section 374(2) of Criminal Code Procedure, to set aside the judgment of conviction and sentence made in Session Case No.101 of 2013 on the file of the Sessions Court, Nagapattinam dated 12.07.2019.

For Appellant in Crl.A.466/2019: Mr.D.Veerasekaran

For Appellant in Crl.A.680/2019: Mr.S.N.Arunkumar for
M/s.W.Camyles Gandhi

For Respondent : Mr.S.Sugendran
Govt. Advocate (Crl.Side)



COMMON JUDGMENT

Challenging the judgment of conviction and sentence in Session Case No.101 of 2013 on the file of the Sessions Court, Nagapattinam dated 12.07.2019, A2 has filed Criminal Appeal No.466 of 2019 and A has filed Criminal Appeal No.680 of 2019.

2. The brief facts of the prosecution is as under:

(i) The first accused is an auto driver and the second accused is a butcher. Murugan, the deceased was a married man having a wife and three children. On 21.08.2012, PW2-Mohammad Thasleem, PW3- Nissar Ahamed and Haj Mohamed had invited the deceased Murugan to attend Ramzan party at the Government Tasmac Shop No.5608 in Koorainadu bus stop in Mayiladuthurai.

(ii) Since the deceased Murugan was late, the other three persons had gone inside the bar to consume liquor. At that time, a bottle had fallen from the table of PW2 and it had gone near the table where the accused were sitting. The accused had pushed the bottle towards the table of PW2. PW2 and PW3 and the said Nissar Ahamed, finding that time was not conducive, in order to avoid trouble, had settled the account and had gone out. The accused had followed them outside the shop and had quarreled with them. At that time, the deceased Murugan and PW1 had come to attend the party and by then, it was 4.00 p.m. and the deceased had got down from the bike and questioned them as to what was the matter and thereafter, he had pacified both the parties and sent PW2 and PW3 to their places and other persons had also gone to their village.

(iii) Whiles, the first accused had scolded Murugan saying "நீ என்ன பஞ்சாயத்து பேசுறதுக்கு ஆள் மயிறா", and saying so, he fisted on chest and back of the deceased repeatedly with hands. The second accused had also beat the deceased repeatedly over his body and on the back side, due to which, the deceased fell down with knee on the floor. At that time, the accused had stamped on the deceased stomach and on his private part and it was seen by PW5, the salesman in the Tasmac Bar. The deceased, Murugan had fallen down and become unconscious and thereafter, PW1 had called 108 Ambulance and at about 4.30 p.m., he had also called PW4-Muthukumar, the brother of the deceased and informed him that two persons had assaulted his brother and that he was lying unconscious.

(iv) PW4 had rushed to that place. Thereafter, 108 ambulance had arrived and the Assistants in the ambulance, after examining the said Murugan, declared that he was dead and they had refused to take him in the ambulance. Thereafter, PW4 had called another ambulance and they had taken the victim Murugan to the



Government Hospital, where, the Doctor, who examined, having found that the victim was dead directed to keep the body in the mortuary. Thereafter, on the advice of the villagers, PW1 had requested one Murugesan to write the complaint and the complaint was given to the respondent Police. The complaint is Ex.P1.

(v) On the same day, at 22 hours, PW13, the Sub Inspector of Police in the respondent police station, received the complaint, Ex.P1 and registered the case in Crime No.941 of 2012 and filed an F.I.R, Ex.P5 for the offence under Section 302 IPC and thereafter, she had sent the FIR to the Judicial Magistrate I, Mayiladuthurai and sent the copies of the same to the Inspector of Police through PW10, Gunasekaran, Head Constable.

(vi) PW14, Inspector of Police, who was having additional charge of Mayiladuthurai Police Station, received the FIR from PW13 and next day at 5.30 a.m., he went to the place of occurrence and prepared Observation Mahazar, Ex.P2 and rough sketch, Ex.P6 in the presence of PW6 Kaliyamurthi and one Senthil. Thereafter, PW14 had gone to Mayiladuthurai Mortuary and conducted inquest in the presence of witnesses. The inquest report is Ex.P7. Thereafter, he sent a request to the Government Doctor, PW8 to conduct post mortem. PW8, Dr.Baskaran had performed the post mortem and gave his opinion stating that the deceased would appear to have died of shock and haemorrhage due to head injury and multiple injuries. The post mortem report is Ex.P3.

(vii) PW11 Karthikeyan, Grade II constable after collecting the viscera and internal organs, handed over the body for final rites and thereafter sent the viscera for chemical analysis, on the directions of the Court.

(viii) In continuation of the investigation, on 22.08.2012 at 16.30 hours, PW14, the Inspector of Police had arrested the first accused in the presence of the witness PW7 and one Vetrivel and recorded the voluntary confession. Later, he came to know about the surrendering of the second accused before the Judicial Magistrate, Karaikal and took him for police custody on 30.8.2012 and later, on 31.08.2012, he had enquired the accused in the presence of PW7 and Vetrivel and recorded the voluntary confession of the second accused.

(ix) Thereafter, the case was taken up for further investigation by the Inspector of Police Kannan (since deceased). He had examined PW9, the Deputy Director of Regional Forensic Sciences Lab, Tanjore and PW8, Dr.Baskaran, who had performed the post mortem and received Ex.P3, post mortem report and Ex.P4, Chemical Analysis Report. Thereafter, he examined



the Head Constable, Gunasekaran, PW10 and Karthikeyan, Grade II constable, PW11 and Kavitha, Sub Inspector of Police, PW13 and recorded their statements. After completing the investigation, on 26.12.2012, he filed the final report against the accused/appellants for the offence under Section 294(b) and 302 IPC.

(x) The case was taken up in P.R.C.No.23 of 2012 by Judicial Magistrate I, Mayiladuthurai, after furnishing the documents under section 207 Cr.P.C. Thereafter, finding that the case was triable exclusively by the Court of Sessions, committed the case to the Court of Sessions, Nagapattinam and the case was taken for trial under S.C.No.101 of 2013.

(xi) On the side of prosecution, PWs 1 to 14 were examined and Ex.P1 to Ex.P9 were marked. No Material Objects were cited. When the accused were questioned under Section 313 Cr.P.C, they refuted the charges stating that it is a false case, however, no witnesses were examined on their side.

(xii) The Trial Court, finding that there was no enmity between the deceased and the accused and the incident had occurred during the sudden quarrel and on finding that the accused not guilty for the offence under Section 302 IPC, however, finding that the accused were guilty for the offence under Section 304(ii) IPC, convicted the accused under Section 304(ii) IPC and sentenced to undergo rigorous imprisonment for seven years and pay a fine of Rs.5000/- and in default to undergo rigorous imprisonment for six months against which, the above Criminal Appeals have been filed by the accused.

3. The crux of the submissions of Mr.Arunkumar, learned Counsel for the appellant in CrI.A.No.680 of 2019 is as under:-

(i) The appellants/accused are totally strangers. They do not know each other and they have been falsely implicated in this case. Though PWs 1 to 3 and 5 were said stated to be present at the scene of occurrence, PW2 and PW3 have left the place prior to the alleged occurrence and the presence of PW1 at the place of occurrence is highly doubtful and PW1 has been planted by the prosecution, since he happened to be a friend of the deceased.

(ii) Though the incident is said to have happened at 4.00 p.m. in a place which is just 1 km away from the police station, the complaint has been preferred to the police station only at 10.30 pm after a delay of 5-½ hours. Further, though the residence of the Judicial Magistrate is only 1 km away from the police station, the FIR had reached the Court at 3.00 am of next day, thereby creating a great doubt in the prosecution's case.



(iii) Admittedly, no evidence has been let in to show that the accused are friends. In fact, the accused themselves are strangers and PW1 and the accused are also strangers to each other. PWs 2 and 3, who were present at the scene of occurrence, are also strangers to the accused. Such being the case, no proper investigation has been done in respect of the identification of the accused and no test identification parade has been conducted to conclusively establish that the accused are the assailants in this case.

(iv) The evidence of PW1 with regard to the injuries stated to have been implicated by the accused does not tally with the medical evidence given by the Doctor, who conducted the postmortem. The above fact is an additional proof to show that PW1 is not an eyewitness to the occurrence and he has been planted in this case by the prosecution.

(v) The learned counsel, in support of his contention, relied on the decision in

- (1) Thulia Kali v. The State of Tamil Nadu ((1972) 3 SCC 393).
- (2) Nalli @ Nallianna Gounder (1993 Cri.L.J. 1409)
- (3) State of M.P. v. Kriparam ((2003) 12 SCC 675)
- (4) Mahavir Singh v. State of Madhya Pradesh ((2016) 10 SCC 220)

4. Mr.D.Veerasekaran, learned counsel for A2/appellant in CrI.A.No.466 of 2019, while reiterating the submissions made by the learned counsel for the appellant in CrI.A.No.680 of 2019, would submit that the appellant and the other accused are total strangers. He would further submit that as per the evidence of PW1, he and the deceased were not drunk, however, the Chemical Analysis Report falsifies the case of PW1. He would submit that as per Ex.P4, the Expert had opined that the deceased was fully drunk and his stomach contents viz., Intestine, Liver and Kidney were detected with excess alcohol thereby suggesting that the deceased was fully drunk and this goes against the evidence of PW1 that he was present alongwith the deceased at the place of occurrence. He would also submit that though PW5 is said to have witnessed the occurrence, his statement had reached the Court after four months at the time of filing final report on 26.12.2012. He would further submit that though the Tasmac bar had CCTV camera inside and outside, no investigation has been done by the prosecution with regard to the presence of other witnesses at the place of occurrence and the best evidence in this case is suppressed by the prosecution thereby creating doubt in the prosecution case. He further submitted that there are two complaints in this case, one had been given by PW4, Muthukumar, brother of the deceased and subsequently, the present complaint has been given by PW1, which is also confirmed by PW14, Investigation Officer. The learned counsel would also submit that as per the version of PW1, he had called the 108



ambulance and the assistants and the staff of the ambulance had arrived and declared that the victim was dead and they had refused to take him to the hospital. When such being the case, there was no necessity for PW1 and PW4 to have taken the victim to the hospital and if the victim had died at the spot, they would have immediately rushed to the police station which was only one kilometre from the scene of occurrence and the prosecution has not examined the said driver and staff of the 108 ambulance and had also not examined the driver of the ambulance called subsequently, who is stated to have taken the deceased to the hospital. The learned counsel would further submit that though the ocular testimony of a witness has greater evidentiary value vis-a-vis the medical evidence, when the medical evidence makes ocular testimony improbable, it becomes a relative factor in the process of valuation of evidence and when the medical evidence completely rules out all possibility of ocular evidence being true, the ocular evidence has to be disbelieved.

5.Mr.S.Sugendran, learned Government Advocate (Criminal Side) appearing for the respondent would submit that the occurrence had taken place in front of the Tasmac Bar at 4.30 p.m where PW1 and PW5 had witnessed the occurrence and immediately, PW1 had called the 108 ambulance and thereafter since the staff of the ambulance had refused to take the victim, PW1 and PW4 had called another ambulance and had taken the victim to the hospital, where the Doctor had declared that the victim was brought dead and had directed to take the body to the mortuary and thereafter, PW1 and PW4 had intimated about the incident to the relatives and the wife of the deceased and they had given complaint to the police and the delay had been properly explained by the police. He would further submit that finding that there is no evidence with regard to enmity and motive and finding that the incident had happened during a scuffle, the Trial Court had rightly found the accused guilty under Section 304(ii) IPC and convicted and sentenced them as referred to above.

6.Heard the learned counsel appearing for the parties.

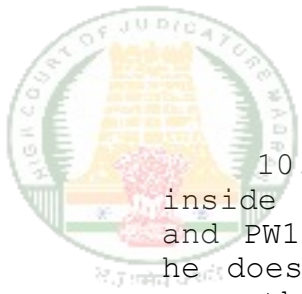
7.The case of the prosecution is that PW2 had invited the deceased for the Ramzan party at Tasmac Bar near Koorainadu bus stop and the deceased, along with his friend Tamilmani, PW1 had gone to the party and since there was some delay on their reaching the Bar, PW2 and PW3 along with another friend had gone to the bar and when they were inside the bar, a quarrel had erupted between them and the accused. PW2 and PW3 and the another friend by name Nissar Ahamed, who did not want to sit in the bar, had come out. The accused was said to have followed them and quarreled with them outside the Bar. At that time, the



deceased and PW1 have come there and the deceased intervened and pacified the accused and PW2 and his friends and thereafter PW2 and his friends had left to their village. It is the further case of the prosecution that after PW2 and his friends had left the scene of occurrence, the accused were said to have abused the deceased with filthy language and fisted and beat him with hands and when he had fallen down, the accused had stamped over his stomach and his private parts, due to which he had sustained multiply injuries and also a head injury and thereafter he was taken to the hospital, where he was declared as brought dead.

8. It is the evidence of PW1 that the deceased and himself are friends and on 21.08.2012 when he was at home, the deceased had called him at 3.00 pm to join a party hosted by his friends and that he along with the deceased had gone to bar near Koorainadu bus stop at Mayiladuthurai and when they had reached there at 4.00 pm, he had seen PW2 and his friends quarreling with the accused and the deceased had intervened and pacified them and thereafter, PW2 and his friends had left the place and they were also about to leave and at that time, the first Accused had quarreled with the deceased and abused him and had fisted him on his chest and face. The second Accused had also assaulted him all over the body and unable to bear the pain, the deceased had fallen down and thereafter the accused had repeatedly stamped on his stomach and his private parts and thereafter they had run away from the scene of occurrence and the deceased had fallen unconscious and thereby, he had called 108 ambulance and also informed PW4, brother of the deceased, who had also come to the scene of occurrence and thereafter, the ambulance had come and the driver and the staff, after examining the deceased, had informed that he was dead and they had left and thereafter, PW4 had called another ambulance and took the deceased to the hospital where the Doctor, who had examined the deceased, had declared that he was brought dead and sent the body to the mortuary and thereafter, the villagers had come and they had advised them to give the complaint and that he had asked one Murugesan to write the complaint and went to the police station at 10.00 pm.

9. However, during his course of examination, PW1 had deposed that at that time the deceased Murugan and himself did not consume liquor. Further, he had also stated that even before the arrival of PW4, he was aware that the victim was dead and the policemen did not come to the Tasmac Shop as well as to the hospital and he had also deposed that he does not know the accused at the time of occurrence and that he enquired about their names from the nearby shop keeper and he is unknown to him and that the complaint was written at 9.00 pm and it was given to the police at 10.00 pm.



10. PW2 had spoken about the incident that had happened inside and outside the bar before the arrival of the deceased and PW1. However, during his cross examination, he deposed that he does not know the accused prior to the occurrence. Even as per the case of prosecution, he had left the scene of occurrence, prior to the occurrence. PW3 had collaborated the evidence of PW2.

11. PW4, brother of the deceased had deposed that on 21.08.2012 when he was at home, PW1 had called him around 4.30 pm and informed him that two persons had assaulted his brother and that his brother was lying down unconscious and that he had gone there and at that time 108 ambulance had came and the persons in the ambulance informed that his brother was dead and thereafter, PW4 had called another ambulance and had taken the victim to Mayiladuthurai Hospital where he was declared dead. Thereafter, he had informed his relatives and went to police station and gave a complaint at 10.00 p.m.. In cross examination, he had also deposed that he doesn't know the accused prior to the occurrence.

12. PW5, Salesman of the Tasmac shop had deposed that the first accused is an auto driver and the second accused is a butcher and that he knows them since they come to the bar often and that he also knows PW2, PW3, PW1 and the deceased. On 21.08.2012 he had seen the accused quarelling with PW2 and his friends and at that time PW1 and the deceased had come there and they had pacified them and dispersed them and thereafter, PW2 and friends had left the scene of occurrence and thereafter, the first accused abused the deceased and fisted him on his and chest and the second accused had beaten him on his back and all over the body, due to which the deceased had fallen down and thereafter, the accused had kicked him repeatedly and stamped on his stomach and private parts and that they left to their houses. The evidence of PW5 corroborates the evidence of PW1 with regard to arrival of Ambulance. In his cross examination, he had deposed that as per Circular of Tamil Nadu Government, CCTV cameras have to be fixed in the Bar and that if the footages are seen, it would reveal as to who had come to the bar on the particular day. He further deposed that when the police had enquired him, they did not see the CCTV camera and he had deposed that no complaint was given to the police station from their side.

13. PW6 is the witness to the Observation Mahazar. In the cross examination, he had deposed that the deceased Murugan is known to him for 7 to 8 years.

14. PW7 is the witness to the arrest and voluntary confession of the accused. He had attested the voluntary confession



statement given by the accused.

15.PW8 is the Doctor, who performed autopsy. He deposed that he had conducted the autopsy on 22.08.2012 at 11.05 pm found the following injuries:-

"(1) Contusion over the occipital area 6x 5 cm.
(2) Contusion in front of (R) Chest 8x6 cm.
(3) An abrasion below the (R) Petalla 2x1 cm.
(4) On opening of the neck, Hyoid in tact. Thorax: No broken ribs. Both lungs and heart pale. Heart contain 50 ml of blood in it. Abs. Stomach contains about 400 ml of digested rice particles. Liver, spleen, kidneys are pale. Intestine: digestive gas. No breakage of skull bones. Membrane in tact. About 200 ml of blood present in the subdural spaces over the occipital area of brain. Brain surface normal. Stomach, Liver, Intestine, Kidney and preservative solution sent for chemical analysis of viscera."

16.PW8 had taken the Viscera, intestinal parts and liver and sent it to chemical analysis and thereafter, on 26.09.2012 he gave the opinion stating that the deceased would appear to have died of shock and hemorrhage due to head injury and multiply injuries. He further opined that one injury could have been caused on falling down on the floor due to pushing by two persons. In his cross examination, he says that the injury on the head was a subdural hemorrhage and that when a drunk person falls down and there is a possibility of him sustaining subdural hemorrhage and that he was aware from the Viscera Report that the deceased was drunk at the time of occurrence.

17. PW9 is the Scientific Officer of the Forensic lab which conducted the Test and PW12 is the Deputy Director of the Forensic Lab. They have deposed about receipt of viscera and other intestinal organs in a sealed container and the test conducted. Their Report is Ex.P4 which reads as under:-

"1.Stomach - Detected 236 (Two hundred and thirty six) milligrams of ethyl alcohol but not other poison.
2.Intestine -Detected 184(One hundred and eighty four) milligrams of ethyl alcohol but not other poison.
3.Liver - Detected 483 (Four hundred and eighty three) milligrams of ethyl alcohol but not other poison.
4.Kidney - Detected 109 (One hundred and nine) milligrams of ethyl alcohol but not other poison.
5.Preservative- Did not detect ethyl alcohol or other poison."



18. PW10, Head Constable, who had taken the FIR from the police station to the Magistrate, had deposed that on 21.08.2012, he had taken the express FIR and handed it over to the Judicial Magistrate I, Mayiladuthurai at 3.30 p.m. and thereafter handed over copies of the same to the higher officials. In his cross examination, he had deposed that the distance between the police station and the court of the Judicial Magistrate is one kilometre and that it would take about 15 minutes to reach the Court and that he was entrusted with the FIR at 11 p.m.

19. PW11 is the Grade I Constable, who has taken the body of the deceased from the mortuary and handed it over to the Doctor and thereafter handed it over to the relatives. He had deposed that inquest was completed by 9.00 am and thereafter, he had identified the body to the Doctor and thereafter handed over the body of the deceased to his relatives and reported to the police station and thereafter, he had taken the viscera and other intestinal organs to the Forensic Lab and received the Report.

20. PW13 is the Sub Inspector of Police, who has registered the FIR Ex.P5, had deposed that on 21.08.2012, when she was in duty in the police station, PW1 had appeared before her at 22 hours and gave a written complaint, based on which, she had registered a case in Crime No.941 of 2012 for the offence under Section 302 IPC and thereafter, she had forwarded the same to the Judicial Magistrate through PW10 Head constable. In her cross examination, she had deposed that the distance between the police station and Court is only one kilometre and that the probable travel time is half an hour and that she handed over the FIR to PW8 at 23.00 hours.

21. PW14 is the Investigation Officer, who had taken up the case for investigation, having enquired the witnesses, recorded their statements and arrested the accused and after obtaining the information, he had filed the final report on 26.12.2012. In his cross examination, he had deposed that the specific reason for sending the statement of PW5 an employee of Tasmac after four months. Further, he had deposed that he came to know that there was a scuffle had taken place prior to the accused consuming alcohol and that he also knew from the viscera report that the deceased had consumed alcohol. Further, in his cross examination, he had admitted that when he enquired PW4 Muthukumar, he had informed him that he had given a complaint to Mayiladuthurai Police Station.

22. While analyzing the evidence on record, it is seen that admittedly, PW1 and PW5 are the persons said to be the witness to the occurrence. As per the evidence of PW1, he along with



the deceased had gone to the bar and there was a scuffle outside the bar between the accused and PW2 and his friends and that the deceased intervened and pacified them and separated them and PW2 and his friends had left the place and that thereafter, the accused are said to have abused the deceased in filthy language and assaulted him repeatedly with hands and that he had fallen down and they had stamped on his stomach and private parts.

23. It is also specific case that the deceased was not drunk at the time of occurrence. The above statement of PW1 is falsified by the viscera report as well as the postmortem report. The chemical analysis report of the viscera shows that the deceased was heavily drunk. Further, as observed in the post mortem report, the injuries found on the body of the deceased do not tally with the corresponding overtacts.

24. It is the categorical evidence of PW1 that the deceased had fallen down and thereafter, the accused had repeatedly stamped on deceased stomach and his private parts, but, no corresponding injury is found on the body of the deceased.

25. Further, in this case, the incident is said to have taken place at 4.30 pm at a place, which is only one km away from the police station, however, the complaint had been given only at 22.00 hours and there has been an unexplained delay of 5-½ hours in giving the complaint. Further, the FIR has reached the Court, which was just 1 km away, after 5 hours. There is also no explanation for the said delay. Further, in this case, though the incident had taken place in a busy area, no other independent witness has been examined to speak about the occurrence. Further, the statement of PW5, Salesman of the Tasmac bar has reached Court only after four months and no proper explanation has also been stated by the police.

26. In this case, admittedly, there is unexplained delay in giving the complaint and the FIR and the statements recorded from the witnesses reaching the Court. Taking into consideration the infirmities, the evidence of PW1 is not reliable and his presence at the scene of occurrence is also highly doubtful.

27. Further, in this case, admittedly the accused themselves are strangers to PW1 and other witnesses and in such circumstance non conducting of test identification parade also creates a doubt in the prosecution case.

28. In Thulia Kali v. The State of Tamil Nadu ((1972) 3 SCC 393), it has been held as under:-

"12. It is in the evidence of Valanjiaraju that the house of Muthuswami is at a distance of three



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furlongs from the village of Valanjiaraju. Police Station Valavanthi is also at a distance of three furlongs from the house of Muthuswami. Assuming that Muthuswami PW was not found at his house till 10.30 p.m. on March 12, 1970, by Valanjiaraju, it is not clear as to why no report was lodged by Valanjiaraju at the police station. It is, in our opinion, most difficult to believe that even though the accused had been seen at 2 p.m. committing the murder of Madhandi deceased and a large number of villagers had been told about it soon thereafter, no report about the occurrence could be lodged till the following day. The police station was less than two miles from the village of Valanjiaraju and Kopia and their failure to make a report to the police till the following day would tend to show that none of them had witnessed the occurrence. It seems likely, as has been stated on behalf of the accused, that the villagers came to know of the death of Madhandi deceased on the evening of March 12, 1970. They did not then know about the actual assailant of the deceased, and on the following day, their suspicion fell on the accused and accordingly they involved him in this case. First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained. In the present case, Kopia, daughter-in-law of Madhandi deceased, according to the prosecution case, was present when the accused made murderous assault on the deceased. Valanjiaraju,



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step-son of the deceased, is also alleged to have arrived near the scene of occurrence on being told by Kopia. Neither of them, nor any other villager, who is stated to have been told about the occurrence by Valanjiaraju and Kopia, made any report at the police station for more than 20 hours after the occurrence, even though the police station is only two miles from the place of occurrence. The said circumstance, in our opinion, would raise considerable doubt regarding the veracity of the evidence of those two witnesses and point to an infirmity in that evidence as would render it unsafe to base the conviction of the accused-appellant upon it."

29. Further, in *Rajeevan v. State of Kerala* ((2003) 3 SCC 355), the Apex Court has held that when there is delay in forwarding the FIR to the Magistrate and it has not been satisfactorily explained by the prosecution, it creates a doubt and gravely and adversely affects the prosecution case.

30. In *Nalli @ Nallianna Gounder* (1993 Cri.L.J. 1409), it has been held that when medical evidence is conflicting with ocular testimony and when there is glaring infirmity in the evidence, the accused are entitled to benefit of doubt.

31. In *State of M.P. v. Kriparam* ((2003) 12 SCC 675), the Apex Court has reiterated that when the prosecution has failed to explain the delay in filing the complaint, it creates doubt in the prosecution case.

32. In *Mahavir Singh v. State of Madhya Pradesh* ((2016) 10 SCC 220), the Apex Court, while appreciating the evidence-medical evidence vis-a-vis ocular evidence, has held that though the ocular testimony of witnesses has greater evidentiary value vis-a-vis medical evidence, when the medical evidence makes the ocular testimony improbable, it becomes a relevant factor in the process of evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibilities of the ocular evidence being true, the ocular evidence has to be disbelieved. The relevant portion of the decision is extracted hereunder for ready reference:-

"22. The position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of



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evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved. (See Abdul Sayeed v. State of M.P. [Abdul Sayeed v. State of M.P., (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262] , SCC p. 274, para 39.)"

33. In this case, P.Ws.1 and 5 were said to be ocular witnesses. It is the case of PW1 that the deceased had called him to attend a party hosted by his friends and that they had gone to the Bar. It is also the specific case of PW1 that he and the deceased were not drunk. He had further deposed that the accused had attacked the deceased repeatedly with hands and they had pushed him and he had fallen down and thereafter, they had repeatedly, stamped him on the stomach and the private parts. Of course, though such a version of PW1 is corroborated by PW5, the statement of PW5 has reached the court after five months and the delay in giving complaint to the police and thereafter, the complaint reaching the jurisdictional Magistrate has not been properly explained by the prosecution thereby creating a doubt with regard to the prosecution case. Admittedly, in this case, the best evidence viz., the presence of CCTV cameras and the footages have been suppressed by the Prosecution.

34. Further, the injuries found on the body of the deceased as per the medical evidence do not correspond to the statement given by PW1 and corroborated by PW5. As per the Report of the Chemical Analyst, Ex.P4, all the intestinal organs of the deceased contained excess amount of ethyl alcohol thereby belying the version of PW1 that he was present alongwith the deceased and both of them did not drunk. Presence of PW1 at the scene of occurrence and having witnessed the occurrence is highly doubtful.

35. Taking into consideration the case of the prosecution in its entirety, the delay in preferring the complaint, delay in the FIR reaching the court, delay in the statement of PW5 reaching the court, non-examination of the first Ambulance driver, non-examination of independent witnesses in the locality, suppression of best evidence, infirmities in the ocular evidence vis-a-vis medical evidence makes the case of the prosecution highly doubtful and improbable.

36. On evaluation of evidence on record, this Court comes to the irresistible conclusion that the prosecution has not proved its case beyond all reasonable doubts and the accused are entitled to benefit of doubt.



37. In view of the above, the Criminal Appeals stand allowed and the Appellants/accused are acquitted of the charges. Fine amount, if any, paid shall be returned to the accused. Bail bonds, if any, executed by the appellants shall stand cancelled.

WEB COPY

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ham/ssk

To

1. The Sessions Judge,
Nagapattinam
2. The Inspector of Police,
Mayiladuthurai Police Station,
Mayiladuthurai Post,
Nagapattinam District.
3. The Judicial Magistrate,
No.1, Mayiladuthurai.
4. The Chief Judicial Magistrate,
Nagapattinam.
5. The Superintendent,
Central Prison,
Trichy.
6. The Public Prosecutor,
High Court of Madras.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.D.Veerasekaran, Advocate, S.R.No.63569
+1cc to Mr.W.Camyles Gandhi, Advocate, S.R.No.62827

Cr1.A.Nos.466 & 680 of 2019

SSI(CO)
RGA(21/01/2022)