



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	08.02.2021
Date of Judgment	04.03.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

AND

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)No.18 of 2019

and

Crl.M.P(MD)No.3833 of 2020

1.Sivakumar @ Siva

2.Rahuman : Appellants/Accused Nos.1 & 2

Vs.

State represented by
The Inspector of Police,
Kulithalai Police Station,
Karur District.

(Crime No.492 of 2016)

: Respondent/Complainant

Prayer: Criminal Appeal filed under section 374 of the Criminal Procedure Code against the judgment passed by the Additional Sessions Judge/Fast Track Mahila Court, Karur, in S.C No.71 of 2017, dated 27.03.2018.

For Appellants : Mr.R.Karunanithi

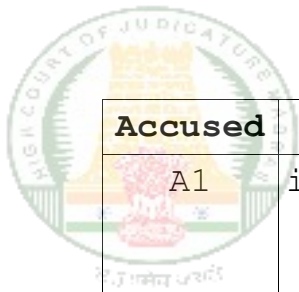
For Respondent : Mr.Anandha Raj,
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was made by **G.ILANGO VAN, J**)

This appeal has been filed to set aside the judgment passed by the Additional Sessions Judge/Fast Track Mahila Court, Karur, in S.C No.71 of 2017, dated 27.03.2018.

2. The Appellants are arrayed as Accused Nos.1 and 2 in S.C No.71 of 2017 on the file of the Additional Sessions Judge/Fast Track Mahila Court, Karur, dated 27.03.2018 and they have been convicted and sentenced as follows:



Accused	Offence	Sentence
A1	i) 341 IPC	1 month Simple Imprisonment and fine of Rs.500/- in default to undergo 10 days Simple Imprisonment
	ii) 364 IPC	10 years Rigorous Imprisonment and fine of Rs.1000/- in default to undergo 6 months Simple Imprisonment.
	iii) 302 IPC	Life Imprisonment and fine of Rs.1000/- in default to undergo 6 months Simple Imprisonment
A2	302 IPC	Life Imprisonment and fine of Rs.1000/- in default to undergo 6 months Simple Imprisonment

3.Assailing the conviction and sentence, they have come up with this appeal.

4.The case of the prosecution is that the deceased Manjula, after the death of her husband, continued to live in matrimonial house with her child. The Accused Nos.3 to 5 wanted to grab the property from the deceased. So, they conspired with A1 to murder her and in pursuance of the same, on 02.07.2016, at about 2.30 a.m, the first accused attacked the deceased with a stone and the second accused strangled her through towel, as a result of which, she died. Based upon the complaint given by the deceased's father, namely, P.W.1, a case was registered in Crime No.492 of 2016 on the file of the respondent police for the offence punishable under Section 302 of IPC and after completion of Investigation, final report was filed before the learned Judicial Magistrate No.II, Kulithalai and the same was taken on file in P.R.C.No.20 of 2016 and the case was committed to the Additional Sessions Judge, Karur. After completing the formalities at the committal level, the case was taken as S.C.No.71 of 2017 and later, it was made over to the trial Court, namely, the Additional Sessions Judge/Fast Track Mahila Court, Karur and after appearance of the accused, the Trial Court framed the following charges:-

1.Hatching conspiracy - punishable u/s 120(B) of IPC - against the accused 1 to 5.

2.Kidnapping - punishable u/s 364 of IPC. - Against the 1st accused.

3.Wrongful restrain - punishable u/s 341 of IPC - Against the accused 1 and 2.

4.Murder - punishable u/s 302 of IPC and Section 302 r/w Section 120 (B) of IPC - Against the accused 1 to 5.



5. Before the Trial Court, the prosecution in order to prove the charges framed against the accused, examined as many as 30 witnesses and marked 33 documents as well as material objects MO.1 to MO.18.

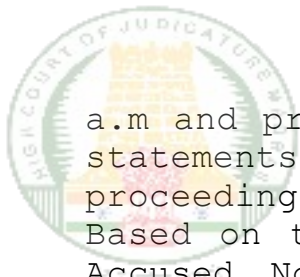
6. At the conclusion of trial, the Trial Court came to the conclusion that the offences alleged against the Accused Nos. 3 to 5 were not proved and acquitted them from all the charges levelled by the prosecution and the offences alleged against the accused Nos. 1 and 2 were proved beyond all reasonable doubts and convicted the appellants for the charges and sentenced them as stated supra. Aggrieved over the conviction and sentence, the present appeal has been filed.

7. We heard Mr. R. Karunanithi, learned counsel appearing for the appellants and Mr. Anandha Raj, learned Additional Public Prosecutor appearing for the State and perused the materials on record.

8. The story of the prosecution as narrated through the prosecution witnesses, is briefly stated as follows:

(i) P.W.1 is the father of the deceased. Two days prior to the occurrence, he visited the house of the deceased, where she was living along with her child after the death of her husband. At about 10.00 p.m, the first accused called the deceased through phone and informed her that he was in Perugamani and asked her to take him home. The deceased Manjula started her last journey by driving MO.10 - TVS XL Super Two wheeler bearing Registration No. TN-AW-5827 from her house. Till 11.00 p.m in the late night, she did not return. P.W.1 made a search. But, he could not find her. On the next day, he found that her daughter Manjula was murdered near Nachalur. He also noticed that the hands of the deceased Manjula were tied behind with towel and murdered by attacking with stones.

(ii) Later, he went to the Police Station and lodged a complaint (Ex.P.1). At that time, P.W.29 was working as Sub-Inspector of Police, in Kulithalai Police Station. On 02.07.2016, at about 9.00 a.m, in the night, he received the complaint from P.W.1 and registered the same in Crime No.492 of 2016, under Section 302 IPC and prepared a printed First Information Report and placed the file for Investigation by P.W.30. P.W.30 received the file at 09.30 a.m and after informing the experts, he visited the place of occurrence at about 10.00 a.m, in the presence of the witnesses namely, P.W.16 and P.W.17 and prepared an Observation Mahazar and a Rough Sketch. He recovered MO.1, two stones and blood stained soil and rough soil and also recovered MO.4 to MO.7 and other Material Objects, which were found in the place of occurrence. He conducted inquest over the dead body of the deceased in the presence of the witnesses from 11.45 a.m to 13.45



a.m and prepared Ex.P.20 - Inquest Report. Later, he recorded the statements of the witnesses and after completing the recovery proceedings, he handed over the Material Objects to the Court. Based on the secrete information, on 03.07.2016, he arrested the Accused Nos.1 to 3, at about 11.00 a.m, and he enquired the accused in the presence of P.W.19 and one Venkadesh and at that time, A1 voluntarily made a confession statement and in pursuance of the same, the first accused produced a cell phone (MO.8) and later, enquired the second accused before the same witnesses and he also gave a confession statement, inpersuance of which, MO.9, which belongs to the deceased, was recovered from a place, below the bridge of Varivaikkal. Also recovered MO.10, the Moped used by the deceased from Sakthi Vehicle Stand in Namakkal Bus Stand, inpersuance of the confession statement given by the first accused, at about 06.00 p.m.

(iii) At about 07.30 p.m, he arrested the Accused Nos.4 and 5 near Musiri bridge. The fourth accused also confessed and produced MO.12, samsung phone, which was seized under a mahazar. Later, he submitted a alteration report before the Court for the offences punishable under Sections 147, 148, 364, 302 and 120 (b) IPC. Thereafter, he recorded the statements of other witnesses and recorded the statement of P.W.4 - child witness namely, Sivaranjani @ Roja, after following the procedure, he sent the body for postmortem through proper person and also sent Material Objects to Forensic Science Experts by giving requisition letter to the Judicial Magistrate II, Kulithalai. After recording the statement of the Doctor, who conducted postmortem and other experts and after completing the Investigation, he filed a final report before the learned Judicial Magistrate II, Kulithalai.

(iv) P.W.4 is the daughter of the deceased. She is aged about 13, at the time of her examination before the Court. She saw the deceased leaving the house for bringing the first accused, at about 10.00 p.m, on the particular day. She identified MO.10 - the Moped, in which, the deceased went to bring the first accused. P.W.5 saw the first accused taking the deceased in a Moped (MO.10), at about 10.00 p.m, on 01.07.2016, near Nachalur Kalathumedu Road. P.W.14 also saw a person standing near Oothakadai at about 10.30 p.m. When he made an enquiry, he informed him that he came there to see one Siva.

(v) P.W.20, the Doctor, Government Hospital, Kulithalai, conducted postmortem over the body of the deceased and he found the following injuries :

An abrasion measuring 2 x 5 cm on the right side neck and an abrasion measuring 1 x 1 cm over the right elbow. The third abrasion measuring 2 x 2 cm over the right side stomach region. Fracture in



the frontal bone measuring 5 x 2 cm. Fracture in the back side of the head measuring 4 x 3 cm. Fracture on the right skull measuring 7 x 2 cm and 100 ml of blood clotting in brain is noted.

- According to the Doctor due to the haemorrhage of injuries sustained in the head region, death occurred.

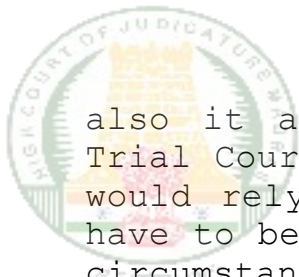
(vi) The points for consideration in this appeal, are (i) ***whether the charges levelled against these appellants have been proved by the prosecution beyond all reasonable doubts*** and consequently, (ii) ***whether the judgment of the conviction and sentence passed by the Trial Court are sustainable.***

Vii) Before we go into the merits of the case, the relationship between the parties must be seen. The husband of the deceased, namely, one Rengan is the son of one Muthukrishnan and Amirtham. Muthukrishnan and Amirtham have other children, namely, the third and fourth accused. The first accused is the husband of the third accused and the fifth accused, the husband of the fourth accused. The second accused is the friend of the first accused. This relationship between the parties is not denied. But, however, there is an allegation to the effect that the first accused developed illicit intimacy with the deceased, for which, there is some evidence, but, that was not the reason for the murder.

(viii) According to the prosecution, after the death of Rengan, the deceased started to live in the house, which belongs to her mother-in-law, namely, Amirtham. A dispute arose between the deceased and the other children of Amirtham namely, A3 and A4 and they demanded the deceased to surrender the house. But, the said Amirtham was not examined as a witness, not only before the Court, but, even the Investigating Officer has not recorded the statement of the said Amirtham. But, however, it is on record to show that there was enmity between the deceased and A3 & A4 about the property.

(ix). So, on that ground, according to the prosecution, there was a motive to do away with the deceased and decided to grab the property. This is the back ground of the case.

9. There is no eyewitness to the occurrence. The case solely rests upon the circumstantial evidence such as the last seen theory, apart from the disclosure statement of the appellants and consequential recovery of the Material Objects connecting the appellants with the occurrence. It is the settled law that when prosecution rests upon the circumstantial evidence, motive must be clearly established. But, at the same, it is also a basic principle that motive is a double-edged weapon. It can be used either way and this principle shall also be kept in mind. The Trial Court believed the prosecution evidence about the motive, the theory of conspiracy between the accused and



also it acquitted the accused Nos.3 to 5. This finding of the Trial Court is also attempted to be taken advantage. The appellant would rely upon the following judgment to show the factors that have to be taken into account while the case solely rests upon the circumstantial evidence.

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i) Sathiyamoorthy and Another Vs. State, Through the Inspector of Police, Sengipatti Police Station, Thanjavur District reported in 2019 (3) MLJ (Crl)129.

ii) Anwar Ali and Another Vs The State of Himachal Pradesh reported in 2021 AIAR (Criminal) 80.

iii) Malaichamy and Another Vs. State of Tamil Nadu reported in (2020) 3 SCC (Cri) 407.

iv) Ramesh Kumar Vs. State of Punjab reported in (2020) 2 SCC (Cri) 404.

10. From above judgment, the following general principles can be summarised.

" (i) the circumstance 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;

(ii) 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;

(iii) the circumstance should be of a conclusive nature and tendency;

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

(v) 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."

11. Keeping in mind, the above said principles, now the facts of the case;

a) On 01.07.2016, the first accused called the deceased over phone to come to Perugamani to bring him home. The deceased started her last journey at about 10.00 p.m from her house in MO.10 and the fact that MO.10 belongs to the deceased, is not denied.

b) En route, P.W.5 saw the first accused taking the deceased in the two wheeler, near the place of occurrence, namely, Neithalur Road, near Nachallur Kalathumedu.

c) According to the prosecution, the deceased was murdered in the place of occurrence at about 2.30 a.m.



d) MO.10 was found in Sakti Vehicle Stand, Namakkal Bus Stand and recovered by the Investigating Officer from P.W.18.

12. P.W.1 and P.W.4 were eyewitnesses to the deceased leaving the house at 10.00 p.m on that day. So, these sequences of events are heavily relied on by the prosecution to bring him, the guilt of the accused.

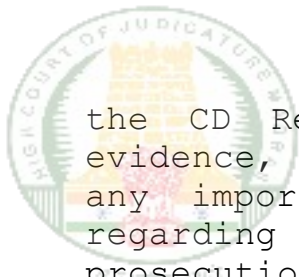
13. The appellant would rely upon the judgment of this Court reported in **Subash and Others Vs. State (2017) 3 MLJ (Crl) 385** for the purpose of argument that child witness must be carefully approached. According to him, as per the judgment, the child witness requires corroboration.

14. There is nothing on record to disbelieve the evidence of P.W.1 and P.W.4, who are the father and children of the deceased with regard to the phone call from the first accused to the deceased and her leaving the house in MO.10, to bring the first accused to home. And nothing has been elicited to disbelieve them over these aspects during the cross examination. So, the evidence of P.W.1 and P.W.4, on this point remains unchallenged.

15. In the sequence of evidence, next comes the evidence of P.W.5. He is an independent witness. He is neither an enemy nor friendly towards any of the parties. He is a Medical Representative. According to him, as mentioned earlier, on 01.07.2016, at about 10.00 p.m, he saw the first accused taking the deceased in a two wheeler bearing Registration No.TN-47-AW-5827 near the place of occurrence. On the next day, he heard that the deceased was murdered in the place of occurrence and he also went and saw the body of the deceased and also informed the police, who are present in the place, about his seeing the first accused with the deceased. The evidence of P.W.5 also remains unimpeached. We find nothing incriminating has been brought on record during the cross examination to disbelieve the evidence of P.W.5. So far, all practical purposes evidence of P.W.5 can be relied upon and so as rightly held by the trial Court.

16. But, one more aspect is that according to P.W.4, the deceased went along with the third accused in MO.10. But, what happened to the third accused after that is not clear on record. But, from this alone, it cannot be said that the deceased did not leave the house to bring the first accused home.

17. Another aspect is that CD Reports are filed by the prosecution to prove that at about 10.00 p.m, on that night, the first accused called the deceased. But, unfortunately, the Investigating Officer has not made any steps to verify and recover the particulars with regard to the owner of the simcard found in



the CD Reports. So, in the absence of any such co-relating evidence, CD reports, which are marked as EX.17, cannot be given any importance. So, the evidence of P.W.28, on this aspect regarding the CD Report, will not help the case of the prosecution.

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18. P.W.1 can be believed, to the extend that the deceased was asked by the first accused through phone. Otherwise, the deceased would not have left the house, during the night hours. Since the first accused happened to be husband of the third accused, there is every possibility that she also accompanied the deceased at that time. But, as mentioned earlier, what happened after that, is not clear on record. So, the chain of events, clearly shows that the first accused was seen with the deceased near the place of occurrence before the incident. When that being so, it is for the accused to explain as to what happened to the deceased. But, absolutely, there is no explanation, on the part of the accused. He simply denied the whole story of the prosecution. In this circumstance, wants to take advantage of Section 106 Indian Evidence Act to its aid.

19. Section 106 of Indian Evidence Act reads as under:-

"when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

20. But, it is also settled law that the accused cannot be convicted solely on the basis of the non-explanation or false explanation. The Hon'ble Supreme Court, in a judgment reported in **Musheer Khan Vs State of Madhya Pradesh** reported in **2010 2 SCC 748**, has struck a cautious note to be adopted by Courts while dealing the murder cases, which are based upon the circumstantial evidence. According to the Hon'ble Supreme Court, presumption of innocence of the accused must have a dominant role. The relevant portion is narrated as under;

"When a murder charge is to be proved on circumstantial evidence, as in the instant case, presumption of innocence of the accused must have a dominant role. Whatever force a presumption arising under Section 106 of the Evidence Act, 1872 may have in civil or in less serious criminal cases, in a trial for murder it is extremely weak in comparison to the dominant presumption of innocence."

21. Principles that is to be adopted while dealing with case, which falls under Section 106 of Indian Evidence Act, has been elaborated by justice **Vivian Bose** in **Shambhu Nath Mehra Vs State of Ajmer, AIR 1956 SC 404**.



" Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reached a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc., in relation to the facts of the case."

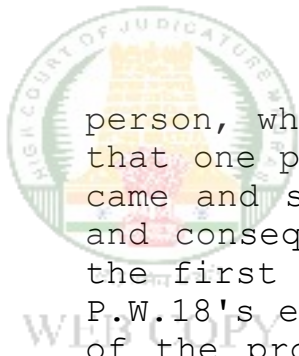
22. This statement of law is restated in a judgment reported in **Sucha Singh Vs State of Pujab AIR 2001 SC 1436** in the following words:-

"We pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference"

23. So, the question, which arises for consideration, is **whether the fact that the first accused was seen with the deceased near the place of occurrence** which fact has been established, can the Court draw an inference of strong ground to convict him?. One another aspect that also assumes importance, supporting the case of the prosecution, is that parking of MO.10, after the occurrence in Sakthi Two Wheeler Stand in Namakkal Bus Stand.

24. The Trial Court by mistake marked the ledger of the two wheeler parking stand as MO.11. It ought to have been marked as document. We find the entry of MO.10 in Serial No.92, which shows that the vehicle was parked in the Stand on 01.07.2016, at about 05.00 a.m and was recovered by the police on 02.07.2016.

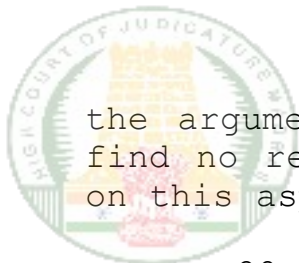
25. Even though, P.W.18. is not in a position to support the case of the prosecution with regard to the identity of a



person, who parked the same in the parking place, but, he admitted that one person parked the two wheeler and on next day, the police came and seized the vehicle. Even though the disclosure statement and consequential recovery of MO.10, in pursuance of statement of the first accused is greatly disputed by the accused, a reading of P.W.18's evidence shows that he is not willing to support the case of the prosecution. But, Ex.P.27, the Seizer Mahazar, shows that it was recovered only on the basis of the information given by the first accused. If really, there was no such information furnished by the first accused, the Investigating Officer could not have recovered the same from the parking area. P.W.19 was the Village Administrative Officer, Maruthur (North) during the relevant time. According to him, on 03.07.2016, at about 8.30 a.m, in the Morning, police informed him that he must come to Pettavaithalai Bus Stand. On his request, he went to the Pettavaithalai Bus Stand, at about 11.00 a.m. At that time, they saw accused Nos.1, 2 and 3 and the Inspector of Police, informed him about the arrest of A1 to A3. All the three accused gave statements in their presence to the Investigating Officer. The first accused, in his confessional statement, disclosed that he would identify the two wheeler parking in Sakthi Vehicle Stand in Namakkal Bus Stand. The admitted portion of the confession statement is marked as Ex.P.W.5. In pursuance of the confession statement, MO.10, the two wheeler was recovered from Sakthi Vehicle Stand in Namakkal Bus Stand. The ledger maintained by the Vehicle stand was also recovered in their presence. That Mahazar is marked as Ex.P.8. The ledger is marked as MO.11. During the cross examination nothing has been brought on record to discredit his evidence. So, from the evidence of P.W.18, no interference can be drawn to the effect that it was not recovered at the instance of the first accused's statement. So, this fact of recovering MO.10 subsequent to the occurrence, clearly connect the first accused with the occurrence. So, this circumstance, cast the heavy duty upon the first accused to explanation as to what happened to the deceased between his taking her and parking the two wheeler in the parking stand.

26. Even though much argument was advanced by the learned counsel appearing for the accused regarding the arrest, the disclosure statement and recovery of MO.10, we find no reason to disbelieve the evidence of P.W.19.

27. According to P.W.19, on 03.07.2016, at about 11.00 a.m., the accused were arrested. But, according to the appellants, P.W.7 in his evidence stated that the accused Nos.1 to 3 were found by him in the Police Station, on the date of occurrence. But, reading of evidence of P.W.7, does not show any such meaning. So, a stray sentence in the cross examination of P.W.7 is not enough to disbelieve the evidence of the Investigating Officer and P.W.19. For the reason stated above. So, we are unable to accept



the arguments of the learned counsel for the appellants and we find no reasons to differ from the view taken by the Trial Court on this aspect.

28. Next aspect is the role of the second accused. As mentioned earlier, the second accused is the friend of the first accused. He has no direct motive against the deceased. According to the prosecution, the first accused sought the help of the second accused and he came to the place of occurrence for helping the first accused. As per the charge, the second accused pulled the deceased to the ground and hit her head against a cement slab, as a result of which, she fainted. As mentioned earlier, there is no direct evidence to prove this occurrence.

29. The prosecution, relies upon the evidence of P.W.14 to connect the second accused, P.W.14 would say that at about 10.30 p.m, on a particular day, he saw a person standing near Oothakadai and he made an enquiry with him and he informed that he came to see one Siva. On the next day, he came to know that Manjula was murdered some three kilometers away from the place where he saw that person. But, even during evidence, he did not identify the second accused in the Court. So, from his evidence, no inference can be drawn that he saw the second accused in the said place.

30. The next connecting link, according to the prosecution, is that after the arrest on 03.07.2016, he made a disclosure statement, in pursuance of which, the cell-phone alleged to have been used by the deceased, was recovered. As already pointed out with regard to the arrest, confession and recovery made from the second accused is spoken by P.W.19, the VAO, who is the witness to the arrest and recovery made from A1 to A3. With regard to this accused P.W.19, would say that in the confession statement of the second accused, he disclosed that he would identify the cell phone, used by the deceased. In pursuance of the same, the cell phone was recovered near Panaiyur Vaigal bridge. The admitted portion of the confession statement is marked as Ex.P.6. The recovery Mahazar is marked as Ex.P.7 and MO.9 is the cell phone. But, unfortunately, MO.9 was not identified by anyone. It was neither shown to P.W.1 nor to P.W.4, the child of the deceased. They are the proper persons to identify the cell phone used by the deceased at the relevant point of time. In the absence of any such identification, even if we believe that MO.9 was recovered in pursuance of the disclosure statement by the second accused, there is no connecting link. Except this piece of evidence, no other creditable evidence is available to connect the second accused to the occurrence. In the absence of any legal evidence, the conviction and sentence imposed upon the second accused by the Trial Court is not sustainable. So, the second appellant is entitled for an order of acquittal from the charges levelled



31. Now, comes, the important aspects of the motive. Last seen theory has been clearly established by the prosecution. There is no proper explanation on the part of the accused No.1. As mentioned earlier, enough evidence is available on record to prove the motive that is why I have mentioned the relationship between the deceased and the other accused persons. P.W.1, father of the deceased, would say that the in-laws were compelling the deceased to vacate the house. P.W.4, child of the deceased would also say that her grand mother namely, Amirtham and other compelled them to vacate the house. P.W.7, brother of the deceased also corroborated the evidence of P.W.1 and P.W.4 over this aspects. P.W.8 is the cousin sister of the deceased. But, she had no direct knowledge about the dispute. So, from the evidence of these people, I find enough force in the case of the prosecution that the first accused had enough motive with the deceased, since he happened to be husband of the third accused, he might have been interested in seeing the deceased vacating the house. The discussion made above is only with reference to the events took place prior to occurrence.

32. The learned counsel for the appellant would heavily rely upon the subsequent events after the occurrence. He would say that the origin of Ex.P.1 is doubtful, since there is no evidence on record to show that even before lodging First Information Report at 09.00 a.m, the police visited the place of occurrence with finger print expert, forensic science officer, photographer, sniffer dog squad and P.W.11 gave a statement and complaint to the police in the place of occurrence itself and there is delay in sending the printed First Information Report to the concerned Court. He would also rely upon the evidence of P.W.4 to the effect that at the early morning, they went to the place of occurrence. So, according to the appellant, the earlier complaint alleged to have been given by P.W.1 to the police in the place of occurrence has been suppressed. Visiting of the police officer even before lodging of the complaint creates doubts in the prosecution version. No doubt, that there is some minor contradictions with regard to the filing of the complaint. But, delay in filing the complaint will assume importance, only in cases where doubt has been successfully created over the very occurrence itself and the possibility of roping innocent person into the offence. But, I find here, no such circumstances, even in Ex.P.1 itself, P.W.1 has not implicated the accused persons. But, he admitted that some male people used to visit the deceased's house. Reading of Ex.P.1 shows that P.W.1 has not suppressed anything and was genuine in his information. So, this argument on the side of the appellants is not acceptable.

33. The argument of the appellant that some other person,



who used to visit the deceased would have caused the death is also not acceptable in the absence of evidence or circumstance. P.W.4 has clearly stated that except the first accused, no other male used to visit their house.

34. So, analysis of the evidence on record, sequence of events that took place clearly proves that only the first appellant was the perpetrator of the crime. No other hypothesis is possible. The possibility of the third person intervening in between the time the first accused was seen with the deceased near the place of occurrence by P.W.5 and murder is completely beyond the comprehension or imagination of any ordinary prudent man.

35. Now the cause of death. All the witnesses has clearly spoken that the deceased was found dead in the place of occurrence with head injuries and two cement blocks were also found near her head. This is also supported by the observation Mahazar prepared by the Investigating Officer. Those two cement blocks were also sent for forensic science examinations. The report (Ex.P.11) shows that two cement blocks marked as item Nos.3 and 4 were found with dark brown stains, which corroborate the ocular evidence. The stones near the head of the deceased, suggest that those two cement blocks, which were found near the head of the deceased were used by the assailants to cause injury on her head. The Doctor, who conducted the postmortem, has also found fracture on the head region. So, it is established that the death caused by hitting against the hard surface and with these two cement blocks, which were marked as MO.1 series. 33. At this juncture, an argument was advanced by the appellant to the effect that P.W.20, who conducted postmortem, has stated that the injuries, would not have been caused through MO.1 series. But, his opinion clearly is in contra to the evidence available on record as discussed above. So, the opinion of P.W.20 on this aspects cannot given any importance. It will not support the case of the appellants. So, we find that no ground is made out by the first appellant to differ from the conviction recorded by the Trial Court.

36. The circumstance clearly establishes the guilt of the first accused. The nature of injuries, the object used and the manner, in which, the offence was committed clearly fits the case under the first limb of Section 300 IPC, which is punishable under Section 302 IPC.

37. In the facts and circumstance of the case, no exceptions are attracted. As pointed out earlier, it is on record to show that the first accused namely, the first appellant took the deceased to a remote place and in the dead of the night caused death. No interference is required regarding the sentence also.



38. In the result, the appeal is partly allowed. Conviction and sentence imposed upon the second appellant is set aside. The fine amount if any paid by him shall be refunded to him. Conviction and sentence passed by the Trial Court upon the first accused are confirmed.

39. Appeal filed by the first appellant is dismissed. (*) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(T&P)

**(*)Deleted and corrected
as per order dt.10.03.2021**

Sd/-
Assistant Registrar(T&P)

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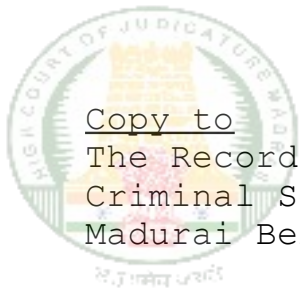
Sub Assistant Registrar(CS)

dss

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

To

- 1.The Additional Sessions Judge,
Fast Track Mahila Court,
Karur.
- 2.The Judicial Magistrate No.II,
Kulithalai, Karur.
- 3.The Superintendent, Central Prison,
Trichy.
- 4.The Inspector of Police,
Kulithalai Police Station,
Karur District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Judgment made in
Crl.A(MD)No.18 of 2019
and
Crl.MP(MD)No.3833 of 2020
04.03.2021

KM (19.03.2021) 15P 8C