



BAIL SLIP

The Appellant viz Pandian, Male, aged 49 of 2015, S/o. Kuzhikannan was directed to be released on bail vide orders of this court made in MP(MD).No.1 of 2015 in Crl.A(MD).No. 24 of 2015 dated 05.02.2015.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.04.2021

DELIVERED ON : 03.09.2021

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRL.A.(MD)No.24 of 2015

Pandian
S/o. Kuzhikannan @ Vellaian : Appellant

Vs.

State Rep. by
Inspector of Police,
Natham Police Station,
Dindigul.
(Cr.No.283 of 2009) : Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, to call for the records of S.C.No.231 of 2010 on the file the learned Principal Sessions Judge, Dindigul District and to set aside the judgment and conviction passed by the learned Principal Sessions Judge, Dindigul District, dated 15.10.2014 in S.C.No.231 of 2010 and allow the appeal.

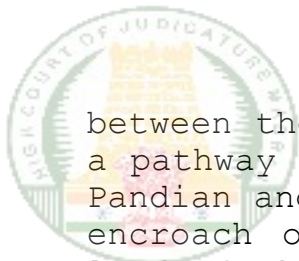
For Appellant :Mr.R.Ramasamy
Legal Aid Counsel
For Respondent :Mr.K.K.Ramakrishnan
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal is filed to set aside the order passed by the learned Principal Sessions Judge, Dindigul in S.C.No.231 of 2010 dated 15.10.2014.

2.The case of the prosecution, as stated by the prosecution, which are relevant for consideration in this case, are as follows:-

2(a).The appellant herein who is the accused and one Azaghu had been in enjoyment of an encroached portion of the forest land at Pallathupatti Village. They had been enjoying the adjacent land as encroachers. The accused, Pandian had cultivated Groundnut in the land that he was in enjoyment. That land, which is encroached and is in enjoyment of Azhagu, was lying idle. There was a live fence



between the lands in enjoyment of the accused and Azhagu. There was a pathway running in between the lines of the lands of the accused, Pandian and Azhagu. The appellant/accused with an ulterior motive to encroach on the common pathway lying in between the lines of the land of the accused and Azhagu removed the live fence bordering the lines. This was objected to by Azhagu.

2(b).On 18.07.2009 by around 07.30 hours, the accused/appellant/Pandian set fire to the live fence, which was objected to by Azhagu. At that time, the sister of Azhagu, by name, Palani Ammal and the son of Azhagu were working in the land, which is in enjoyment of Azhagu.

2(c).Seeing the live fence being burned by the accused/Pandian, Azhagu objected and protested resulting in wordy quarrel between them. By that time, enraged by the objection of Azhagu, the accused/Pandian took out a Country Revolver, which was hidden in the land, which is in enjoyment of Pandian and taking the same in his hand and uttered "you fellow as long as you are alive, today I will finish you". By uttering these words, the accused/Pandian shot Azhagu from close range. The pellets from the Gun penetrated the body of Azhagu in his chest and stomach resulting in his death. The son of Azhagu and the sister of Azhagu protested and came running towards Azhagu. By then, the accused/Pandian ran away with the Riffle in his hand.

2(d).P.W-1-Palani Ammal, sister of Azhagu went to the respondent Police Station/Natham Police Station, which was 17 kms away from the scene of occurrence and narrated the incident to the P.W-12-Sub Inspector of Natham Police Station. The oral complaint under Ex.P-1 was reduced into writing by P.W-12. Based on the complaint of P.W-1 under Ex.P-1, P.W-12-Sub Inspector of Police, Natham Police Station, had registered FIR under Ex.P-11 in Cr.No.283 of 2009. The original FIR under Ex.P-11 and the complaint under Ex-P1 were forwarded to the learned Judicial Magistrate, Dindigul.

2(e).On receipt of the copies of the FIR under Ex.P-11 and the complaint under Ex.P-1, P.W-14-K.Ponnusamy, Inspector of Police, Natham Police Station proceeded to the scene of occurrence. He had prepared Observation Mahazar under Ex.P-4 and Rough Sketch under Ex.P-14 in the presence of the witnesses, P.W-5-Chinnaiya and P.W-2-Velladurai. He had conducted inquest on the body of the deceased Azhagu in the presence of the witnesses, P.W-1-Palani Ammal, P.W-2-Velladurai, P.W-3-Vellai, P.W-4-Sokku, Urangavalli as Panchayatars and one Sellam and he recorded their statements. He had prepared the Inquest Report under Ex.P-15 in the presence of the above mentioned witnesses.

2(f).P.W-14-K.Ponnusamy, Inspector of Police, Natham Police Station, had seized the bloodstained soil and soil without bloodstain in the presence of the same witnesses. Since the crime



involved is by use of Gun, the provisions of Arms Act had been included by P.W-12. Since the provisions of Arms Act had been included, P.W-14-Investigation Officer, had addressed the District Collector, regarding sanction for prosecution under the Arms Act.

2(g).P.W-14-Investigation Officer, had addressed the learned Judicial Magistrate for forwarding the articles seized from the scene of occurrence to the Tamil Nadu Forensic Laboratory for forensic examination. He had addressed the duty Medical Officer, Dindigul to conduct autopsy on the body of the deceased. He had sent the police escorts to identify the body to the Medical Officer on duty at the Government Hospital. After performing Postmortem, P.W-10-Dr.Chandrasekar, had issued the postmortem certificate under Ex.P-8. Accordingly, the District Collector, Dindigul had in his proceedings under Ex.P-13 granted sanction.

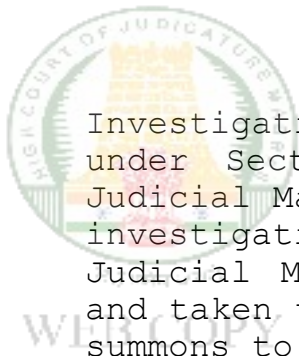
2(h).The accused/appellant/Pandian had surrendered before the Court of the learned Judicial Magistrate, Dindigul. On hearing the news of the surrender of the accused before the learned Judicial Magistrate, Dindigul, P.W-14-Investigation Officer had filed a petition before the learned Judicial Magistrate, Dindigul seeking police custody of the accused. Accordingly, the learned Judicial Magistrate, Dindigul granted police custody of the accused on 24.07.2009.

2(i).After taking the accused into police custody, based on the orders of the learned Judicial Magistrate in Cr.M.P.No.1120 of 2009 under Ex.P-18, the accused had confessed to the crime. Based on the confession of the accused, P.W-14-Investigation Officer took the accused to the place where he had hidden the Gun used in the killing of the deceased, Azhagu. Based on the confession under Ex.P-5, the weapon M.O-1, used in the crime was recovered in the presence of the witnesses, P.W-7-Village Administrative Officer and Village Menial Assistant.

2(j).P.W-14-Investigation Officer had also prepared a Mahazar in the presence of the witnesses for the recovery of M.O-1-Gun. P.W-14-Investigation Officer addressed the learned Judicial Magistrate to forward the M.O-1 to the forensic laboratory for analysis. P.W-14 had received the reports regarding forensic examination of M.O-1-Gun, M.O-2-Bloodstained soil, M.O-3-soil without bloodstain, M.O-6-bloodstained Lungi, M.O-7-bloodstained trouser and M.O-8- Pellets from the Gun.

2(k).After receipt of the forensic report under Ex.P-10, the Investigation Officer examined the forensic experts, P.W-8-Murugaraj, P.W-9-Muthukrishnan, P.W-11-Baskaran and P.W-13-Shanmugavelu and recorded their statements.

2(l). After completion of the investigation, P.W-14-



Investigation Officer had laid a final report of the investigation under Section 173 of Cr.P.C., before the Court of the learned Judicial Magistrate, Dindigul. On receipt of the final report of the investigation from P.W-14-Investigation Officer, the learned Judicial Magistrate, Dindigul had taken cognizance of the offence and taken the final report on file as P.R.C.No.19 of 2010 and issued summons to the accused.

2(m). On appearance of the accused, Pandian, copies were furnished to him under Section 207 of Cr.P.C., and he was examined under Section 209 of Cr.P.C. As the offences alleged by the Prosecution against the Accused being triable by the Court of Sessions, the case records were forwarded to the Court of the learned Principal Sessions Judge, Dindigul. The appellant/accused was questioned as to whether he has financial capacity to engage a counsel on his own, to which, the accused had stated that he has capacity to engage a counsel. The case records were made over to the Court of the learned Principal Sessions Judge, Dindigul and the accused was bound over to the Court of the learned Principal Sessions Judge, Dindigul.

2(n). The learned Principal Sessions Judge, Dindigul, after receiving the case records from the Court of the learned Judicial Magistrate, had re-numbered the case as S.C.No.231 of 2010. On perusal of the records and after hearing the prosecution and the learned counsel for the defence, the learned Principal Sessions Judge, Dindigul, framed charges against the accused under Section 302 of IPC and Section 25(1-b), (1-A) and 27(1) of the Indian Arms Act. When the charges were read over and explained in Tamizh to the accused, he pleaded not guilty to the charge and claimed to be tried. Therefore, the learned Principal Sessions Judge, Dindigul had ordered trial.

2(o). During trial, the prosecution had examined the witnesses as P.W-1 to P.W-14, marked the documents as Ex.P-1 to Ex.P-21 and marked the material objects as M.O-1 to M.O-8.

2(p). P.W-1 had lodged a complaint under Ex.P-1. P.W-2 is the witness to the crime along with P.W-1. P.W-3 had accompanied P.W-1 to the police station. P.W-4 and P.W-5 are the witnesses to the Seizure Mahazar, Ex.P-3 and Observation Mahazar, Ex.P-4.

2(q). P.W-1, in her cross-examination, stated that she was the eye witness to the occurrence and she had lodged the complaint under Ex.P-1 before the respondent police station. P.W-2 had corroborated the evidence of P.W-1. P.W-3 had deposed regarding hearing the Gun shot and after hearing the Gun shot, he went to the place of occurrence and saw the deceased Azhagu lying on his land. P.W-4 had heard the news regarding the death of the deceased Azhagu and came to the place of occurrence. P.W-5 is the Mahazar witness for the



seizure regarding the seizure of bloodstained soil and soil without bloodstains.

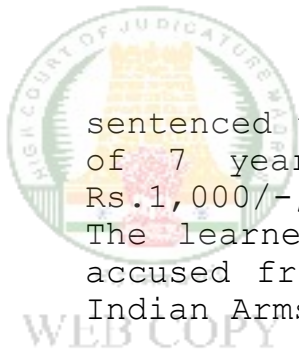
2(r) P.W-6 is also the Mahazar witness regarding the Observation Mahazar under Ex.P-4. P.W-7-Village Administrative Officer of Nadumandalam is the witness to the seizure of M.O-1-Gun. Ex.P-5, confession statement by the accused during police custody. P.W-8, Murugaraj, is the Photographer engaged by P.W-14-Investigation Officer to photograph the scene of crime along with the dead body of the deceased.

2(s).P.W-9-Muthukrishnan, is the Head Constable of Natham Police Station. He had deposed regarding accompanying the dead body of the deceased to the Government Hospital for postmortem. After autopsy, Lungi and Jatti under M.O-6 and M.O-7 worn by the deceased at the time of death were handed over to P.W-14-Investigation Officer, by P.W-10 who performed autopsy on the body of the deceased. Thereafter, the same had been handed over to the relatives of the deceased Azhagu. P.W-10 had deposed regarding the conduct of autopsy by him at Government Rajaji Hospital, Madurai on 19.07.2009 by 11.00 hours and issuing postmortem certificate under Ex.P-8.

2(t).P.W-11-Baskaran is the Forensic Expert, who had conducted the forensic examination of the Gun under M.O-1 and issued the report under Ex.P-10. P.W-12-Sub Inspector of Police had received the complaint under Ex.P-1 from P.W-1 and reduced it in writing and registered the same under Ex.P-11. P.W-13 is the Manager of the Office of the District Collector, who had issued the proceedings under Ex.P-13 regarding sanction to prosecute under the Indian Arms Act. P.W-14 is the Investigation Officer, who had deposed regarding conduct of the investigation, examination of the witnesses and recording of their statements and lodging of final report before the Court of the learned Judicial Magistrate, Dindigul.

2(u). From the deposition of the witnesses, P.W-1 to P.W-14, incriminating portion of the evidences were put to the accused under Section 313 of the Code of Criminal Procedure. When the accused was questioned regarding the same, he denied the incriminating evidences available against him. After the prosecution evidence was closed, the accused had marked the documents under Ex.D-1 to Ex.D-2 regarding the statement of the accused before the Court of the learned Judicial Magistrate, Dindigul. After prosecution evidence was closed, when the case was posted for defence witnesses, none of the witnesses appeared. Instead the documents were marked on the side of the accused as Ex.D-1 and Ex.D-2.

2(v). After hearing the arguments of the learned counsel for the State and the learned counsel for the accused, the learned Principal Sessions Judge, Dindigul had in his judgment found the accused guilty of the offence under Section 304(2) of IPC and



sentenced the accused to undergo rigorous imprisonment for a period of 7 years for the aforesaid offence and to pay a fine of Rs.1,000/-, in default, to undergo one year rigorous imprisonment. The learned Principal Sessions Judge, Dindigul, had acquitted the accused from the charges under Section 25 (1-b) (1-A) and 27(1) of Indian Arms Act.

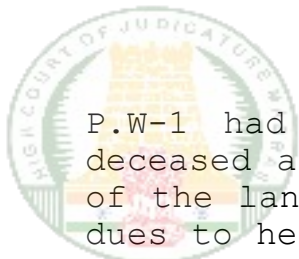
3. Aggrieved against the said judgment of conviction passed by the learned Principal Sessions Judge, Dindigul, the accused had preferred this Criminal Appeal.

4. It had been stated in the grounds of appeal that the trial Court had erred by relying on the evidence of P.W-1. Also, the trial Court had relied on the evidence of P.W-2 and P.W-7 and also the trial Court had not relied on the evidence of P.W-11, who had deposed fairly regarding M.O-1-Gun. The trial Court had failed to appreciate the contradiction as to the place of occurrence between the Observation Mahazar under Ex.P-4 and the Rough Sketch under Ex.P-14. The trial Court ought to have extended the benefit of doubt to the accused and the accused ought to have been discharged. During arguments, the learned counsel for the appellant/accused furnished written arguments attacking the judgment of the learned trial Judge/Principal Sessions Judge, Dindigul.

5. The point of attack by the learned counsel for the appellant/accused is that, as per prosecution the occurrence took place by around 07.30 am., on 18.07.2009. The case was registered in Crime No.283 of 2009 for the offence under Section 302 of IPC and Section 25 (1-b) of Indian Arms Act. Though the case was registered by 12.30 hrs., it reached the Court of the learned Judicial Magistrate at 01.30 pm., only on 18.07.2009. Therefore, the FIR is very much delayed. It gives suspicion.

6. The second point of attack of the learned counsel for the appellant/accused is that P.W-1 was not present in the scene of occurrence at the time of occurrence. On perusal of her cross-examination, it is found that there was no bloodstain on her body or on her dress. She claims to have lifted the body of the deceased Azhagu. If that be the case, bloodstains might have been seen on her body. Therefore, the complaint, Ex.P-1 is doubtful. FIR reached the Court with delay. The statements and materials reached the Court with delay. The evidence of P.W-2, son of the deceased is also doubtful. The statement of the eye witnesses and the material objects reached the Court with delay. The recovery of M.O-1 is also doubtful.

7. The learned counsel for the appellant/accused invited the attention of this Court to the deposition of P.W-1. She had not stated the reason for coming to the place of occurrence at the early hours on 18.07.2021. P.W-14-Investigation Officer had stated that



P.W-1 had not stated the reason for reaching the house of the deceased at the early hours. P.W-1 had handed over the possession of the land enjoyed by her to the accused, who had not been paying dues to her. Therefore, there was a Panchayat in the Village in the presence of Panchayat President, Arumugam. In the Panchayat, the accused Pandian and his brother were opposed to pay dues to P.W-1. Therefore, the accused Pandian had animosity with the deceased Azhagu and similarly, the sister of the deceased, P.W-1 also had animosity with the accused as he has not paid dues after getting lease of the property from P.W-1. Therefore, they are the interested witnesses to implicate the name of the accused. When there is no bloodstain on the body of P.W-1 or on her dress, her presence in the place of occurrence cannot be accepted.

8. In the above circumstances, the presence of P.W-1 at the time of occurrence in the place of occurrence is unbelievable. On that ground, the learned trial Judge ought to have disbelieved the evidence and acquitted the accused on the doubt created by the evidence of P.W-1. The fact that when the wife of the deceased is available in the house, the sister of the deceased, P.W-1 was permitted to lodge a complaint to the police is to be considered by the Court. P.W-14-Inspector of Police, had conducted inquest on the body of the deceased in the scene of crime between 12.45 and 02.30 hours, whereas, P.W-1 had in her deposition stated that she was waiting in the police station from 10.30 am to 01.00 pm. The scene of occurrence is 17 kms away from Natham Police Station. Therefore, the person, who claims to be at Police Station till 01.30 pm., cannot be expected in the place of occurrence during the inquest conducted by P.W-14-Investigation Officer.

9. P.W-7-Village Administrative Officer is not the Village Administrative Officer of the place of occurrence. He is the Village Administrative Officer of the nearby village. When P.W-14-Investigation Officer had taken custody of the accused through the Court, he had informed the Village Administrative Officer of the neighboring village to be a witness. That shows that the witness was willing to sign in the place as requested by the Investigation Officer. That is why when the Village Administrative Officer is available in the scene of crime, a different Village Administrative Officer had been examined as a witness during police custody. Therefore, the evidence of P.W-7-Village Administrative Officer has to be rejected.

10. The admission by P.W-11 that the FIR reached the Court with delay by 01.40 hours in the noon gives presumption that the investigation is not proper. They had something to hide. That is why the Magistrate Court, which is just 1 km away from Natham Police Station, ought to have received the FIR within 11.30 hours, but it had reached only by 01.40 hours. Therefore, there is a delay in reaching the FIR and therefore, the FIR of the investigation cannot



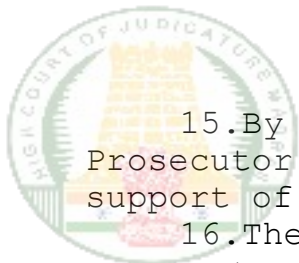
be considered by the Court.

11.The Forensic Expert, in his deposition, had stated that P.W-14-Investigation Officer, had not produced the pellets from the Gun for examination by the Forensic Expert. Without the pellets placed on the Gun, the Forensic Expert report cannot be accepted. He had stated in his cross-examination that muzzle load was used by the accused. He had admitted that pellets from the Gun were not recovered. P.W-2 also had not been to the scene of occurrence. He had corroborated it based on the evidence of P.W-1. He had admitted in his cross-examination that P.W-14-Investigation Officer had not examined him. Therefore, the evidence of P.W-2 is unacceptable considering the fact that he had not informed about the body of his father. Therefore, the evidence of P.W-2 is to be rejected. P.W-2 was not examined in the place of occurrence. Therefore, his presence become suspicious. Therefore, the presence of P.W-2 and P.W-1 is doubtful.

12.Apart from the FIR, all the materials received in this case by the Court with delay. M.O-1-Gun was recovered under Ex.P-6 at about 04.40 pm. P.W-14-Investigation Officer in his cross-examination stated that in the presence of P.W-7-Village Administrative Officer, he had recorded the confession of the accused. P.W-14-Investigation Officer in his evidence stated that the accused had hidden the Gun in a plastic cover. P.W-7-Village Administrative Officer had stated that the accused had recovered the Gun under the tree. Therefore, there is contradiction between the Mahazar witness and the Investigation Officer.

13.In such circumstances, it is not a fair investigation. The Court ought not to have believed the evidence of P.W-1, prosecution witness. P.W-14-Investigation Officer in his evidence had admitted that there had been interpolation in the Seizure of M.O-1. It had been stated in his evidence that the accused was assaulted during police custody, which was recorded under Ex.D-1 and Ex.D-2.

14.In those circumstances, not only the evidences of P.W-1 and P.W-2 son of the deceased Azhagu and the witness to the confession and recovery by P.W-7 and the confession leading to recovery from the Gun, which was obtained by torturing the accused in the police station, for which the statement given by the accused was recorded, but also the documents under Ex.D-1 and Ex.D-2 ought to be considered by the Court. Instead the Court had ignored all these things. There was a reason that P.W-1, Palani Ammal had reason to settle the score with the accused as he had not paid dues for the tenancy of the land, she had filed a false complaint against the appellant/accused. Under those circumstances, the benefit of doubt should go to the accused and the accused shall be acquitted from the crime.



15. By way of reply, the then learned Additional Public Prosecutor had furnished written arguments along with the ruling in support of his contention.

16. The learned Additional Public Prosecutor submitted that the arguments of the learned counsel for the appellant/accused that the sister of the deceased, P.W-1 is living far away from the place of occurrence. She is a resident of Periya Malaioor Valasai and she is not expected to be present in the house of the deceased by early in the morning, when there is no bus facility, cannot be accepted.

17. Point for Consideration:

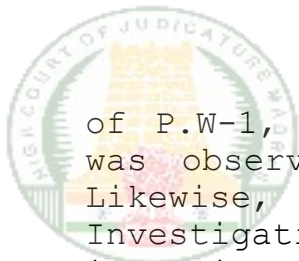
Whether the Judgment of the learned Principal District and Sessions Judge convicting the Accused is perverse warranting interference by this Court?

18. Considering the arguments of the learned counsel for the appellant/accused that no bloodstains were found either on the body of P.W -1 or on the dress worn by her while lifting the body of the deceased, P.W-1 had clearly stated that she reached the house of the deceased Azhagu in the early hours. In her evidence, she had stated that she had to go to the nearest bus stop by walking 7 kms and from there to the police station, which is roughly 10 kms by bus. On the date of occurrence, she had come to the residence of the deceased Azhagu by early in the morning to discuss something important, but something important was not discussed. P.W-2, Vellaidurai, son of the deceased Azhagu had clearly stated that he accompanied P.W-1 to the land belonging to the father of P.W-2. Nothing available on record to prove that he is not available in the place of occurrence.

19. From the deposition of P.W-1, nothing can be suspected. She had cogently stated in detail regarding the occurrence. Considering her status as illiterate woman, nothing can be suspected. The arguments of the learned counsel for the appellant/accused that the receipt of the complaint under Ex.P-1 creates doubt cannot at all be accepted. The learned counsel for the appellant extracted some portion of the evidence, which is irrelevant to disbelieve the contents of the complaint, when the FIR under Ex.P-11 and complaint reached the learned Judicial Magistrate, at 01.00 pm.

20. The fact of delay regarding FIR in reaching the Court had not been cross-examined in the course of cross-examination of P.W-14-K.Ponnusamy, Investigation Officer. Without any specific question regarding the delay, the submission of the learned counsel for the appellant/accused cannot be entertained. There are discrepancies between P.W-1 and P.W-14-Investigation Officer, but that will not affect the case.

21. The occurrence took place in the year 2009. The witnesses were examined in the year 2011. Considering the educational status

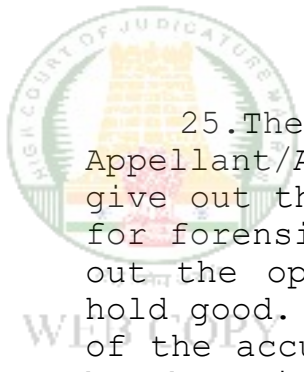


of P.W-1, an illiterate, she had clearly narrated the incident as was observed by her. There is nothing to suspect her evidence. Likewise, there are discrepancies between the evidence of P.W-14, Investigation Officer, who was examined 2 years after the investigation was done by him. That need not be given much weightage.

22.The prosecution had proved the case cogently through the evidence of the witnesses, P.W-1 to P.W-14. The contention of the learned counsel for the accused/appellant that M.O-1, Gun was not at all used cannot be accepted. Immediately after the incident, the accused absconded. He had surrendered before the Court of the learned Judicial Magistrate, Dindigul. Only after his surrender, he was taken into custody on application by P.W-14-Investigation Officer. After taking the accused into police custody, based on his confession, M.O-1-Gun was recovered in the presence of the witnesses, P.W-7-Village Administrative Officer and it was recorded under Ex.P-6. Just because the Village Administrative Officer of the village, wherein, the occurrence took place was not available, a Village Administrative Officer of the neighbouring village was examined as witness for the confession and recovery, that does not mean the evidence of P.W-7- Village Administrative Officer is unbelievable.

23.The Village Administrative Officer is a Government Servant. Before his presence, if the confession is recorded, it has some weightage and there is no possibility of witness turning hostile. Therefore, for the said assurance only, P.W-7-Village Administrative Officer, is put as a witness. The Revenue Officials may have their busy schedule on day-to-day basis. The Village Administrative Officer, who was free at that time, was requested to remain as a witness. That does not give an intention or a motive for him to speak as against the accused.

24.The arguments of the learned counsel for the appellant/accused regarding the deposition of P.W-7 has to be rejected as a Village Administrative Officer has no enmity to the accused. P.W-14-Investigation Officer had requested P.W-7-Village Administrative Officer to remain the witness for his assurance that the witness will not turn hostile. The Village Administrative Officer on the Revenue Side have busy schedule. Therefore, on the particular date, the Village Administrative Officer of this village where, the crime took place is not available. There cannot be any other contention just because the Village Administrative Officer of the village was not examined, it does not mean that the evidence of P.W-7-Village Administrative Officer, who was the witness to the confession leading to recovery of M.O-1 is unbelievable and cannot at all be accepted. The said arguments of the learned counsel for the appellant/accused had to be rejected.



25.The other arguments of the learned counsel for the Appellant/Accused that the evidence of P.W-11 that he was unable to give out the opinion as the pellets from M.O-1-Gun was not available for forensic examination without which it was not sufficient to give out the opinion. Therefore, the Gun was not at all used will not hold good. Only after arrest of the accused, based on the confession of the accused during the police custody, the Gun was recovered and by the said time pellets are not available.

26.Further, the learned Additional Public Prosecutor had submitted that there are reported rulings, in which, there had been contradictions between the forensic expert and the evidence of eye witness to the crime, where, the Court had convicted the accused based on the eye witness. Therefore, the arguments of the learned counsel for the appellant/accused has to be rejected. He further submitted that here, the postmortem report had clearly stated that the death was caused due to the pellets injury suffered by the deceased on the vital parts of the body.

27. The evidence of P.W-10-Dr.Chandrasekar, had clearly established the deposition of P.W-1 and P.W-2, who were the eye witness to the crime as per prosecution. Therefore, the learned Additional Public Prosecutor submitted that apart from the above fact that the accused voluntarily surrendering before the Court of the learned Judicial Magistrate, Dindigul, he was taken into police custody after filing an application by P.W-14-Investigation Officer and during custody, he had confessed to the crime. Based on his confession, M.O-1 was recovered. By the time, the pellets could not be seized. That is not fatal to the prosecution case. There are sufficient materials to prove the case beyond reasonable doubt that the accused herein alone had committed the murder of Azhagu using M.O-1-Gun. The injuries on the deceased as reflected by the postmortem certificate under Ex.P-8 had proved the case beyond reasonable doubt.

28.The learned counsel for the appellant/accused had relied on the ruling of the Hon'ble Supreme Court in the case of **Bahal Singh Vs. The State of Haryana** reported in **(1976) 3 Supreme Court Cases 564**. The same ruling was relied on by the learned Additional Public Prosecutor stating that the ruling relied on by the learned counsel for the appellant/accused states that the evidence of chance witnesses have to be viewed with suspicion. Here the evidence of P.W-1 had been proved with the evidence of Doctor-P.W-10 and postmortem report under Ex.P-8.

29.Further, it is the conduct of the accused, who himself surrendered before the Court of the learned Judicial Magistrate, Dindigul, on the basis of which he was taken into police custody and in the police custody, he had confessed to the crime and based on his confession, M.O-1 was recovered in the presence of P.W-7.



Therefore, this very ruling cited by the learned counsel for the accused if applied in this case, the Court can approach the evidence of P.W-1 and P.W-2 with further corroboration through postmortem report under Ex.P-8.

30. For the arguments of the learned counsel for the appellant/accused that the accused had made statement to the learned Judicial Magistrate that he was tortured in the police custody, the learned Additional Public Prosecutor submitted that if there had been torture to the accused by P.W-14-Investigation Officer, the Court can initiate action as against P.W-14-Investigation Officer.

31. During grant of custody, P.W-14-Investigation Officer, was warned that he shall not torture the accused either physically or mentally. Not only that, before and after police custody, the accused is examined through the Medical Officer in a Government Hospital as per mandatory provision in the Code of Criminal Procedure and as per the guidelines issued by the Hon'ble Supreme Court. When the guidelines are not followed, this Court will not let off the Judicial Magistrate for violation of guidelines by the Hon'ble Supreme Court. Also, during the period of custodial interrogation, the accused is permitted to meet his counsel in a specified time by the learned Judicial Magistrate, who passes the order. Therefore, the statement made by the accused under Ex.D-1 and Ex.D-2 are only with an ulterior motive to escape from the clutches of law and to escape from the punishment. The statement under Ex.D-1 and Ex.D-2 are motivated statement, the Court need not give weightage to the same and therefore, it has to be rejected.

32. On perusal of the entire evidence available before the learned Principal Sessions Judge, Dindigul through P.W-1 to P.W-14 and the discussion of the learned District and Sessions Judge assessing the evidence from Paragraph Nos.16 to 32 wherein he had arrived at a logical conclusion that the accused before the learned trial Judge/appellant herein alone had committed the offence. Even though charge was framed under Section 302 of IPC, the learned Sessions Judge, Dindigul had in the light of the evidence available before him, convicted the accused for the lesser offence under Section 304 (2) of IPC only instead of offence under Section 302 of IPC which was the original charge.

33. The status of P.W-1 being an illiterate woman. She had proceeded to Natham Police Station from the nearest approach-road from the place of occurrence i.e., Pallathukadu is 8 Km from Manickam Kadai. From Natham Police Station to Manickam Kadai it is 15 Kms. P.W.7-Village Administrative Officer at inquest had stated that he went to Manickam Kadai on vehicle and from there, they had to walk up hill to reach the place of occurrence Pallathukadu which is roughly 23 Kms. The illiterate woman had proceeded to the Police Station by walking 8 Kms from the hill which is the place of



occurrence to nearest place where she can get bus to Natham Police Station that caused delay in reporting the crime to the Police Station. Therefore, the objection in the grounds of appeal that the registration of FIR is delayed cannot at all be accepted. Not only that, the occurrence took place in the early hours of 18.07.2009. It was registered as FIR only by 12.30 hrs. It was entered in the General Diary by 10.30 hrs. The FIR was registered only by 12.30 hrs as per the details in the FIR under Ex.P-11. P.W-1 was examined before the Court on 10.11.2011. In the cross examination, she had stated that she had accompanied the Police to the scene of Crime where the inquest was conducted and being an illiterate woman, she had stated that till noon, she was in the Police Station. She denied that she had lodged the complaint only at the instigation of Panchayatdar's. The arguments of the learned counsel for the appellant that she could not have been available in the place of crime in the early hours as well as in the noon. When she had stated that she was in the Police Station in the morning Hours between 9 and 10, it was assumed that she had accompanied the Investigation Officer to the scene of occurrence to enable the Investigation Officer to locate the scene of occurrence. It is not a road side place. It is a hill and inside the Forest. The encroached portion under the enjoyment of the deceased and accused had to be located and for that purpose, the presence of P.W-1 is necessary. Therefore, the evidence of P.W-14-Investigation Officer who had conducted the inquest between 12.45 p.m., and 2.45 p.m., is found reasonable and acceptable. As per the arguments of the learned counsel for the Appellant/Accused, the evidence of P.W-1 and P.W-2-son of the deceased cannot be believed and is to be rejected. But the learned trial Judge had stated that they could be believed as they were direct witnesses and they had withstood cross examination. Therefore, the same had to be accepted and the arguments of the learned counsel for the appellant/accused is rejected. P.W-3 and P.W-4 are neighbours who heard gun shot and came to the place of occurrence and saw the deceased lying. P.W-11-Forensic Expert, who had deposed regarding gun under M.O-1, on examination of gun, it was found that the gun was recently used. P.W-11 also stated in his deposition that by examining the gun under M.O-1, it was found that gun was in usable condition and it was functionable and used recently. The pellets could not be tested on shot gun. Only in the case of riffle, ballistics experts used to find out whether it is from the same riffle. Since shot gun does not have riffle marks inside the barrel of the gun, it could not be tested.

34.P.W-10-Doctor had deposed regarding conducting autopsy on the body of the deceased and issued Ex.P-8-Postmortem Report which clearly shows that the deceased died due to bullet injury passed on the vital organs.

35.Apart from all these things, the accused who was absconding,

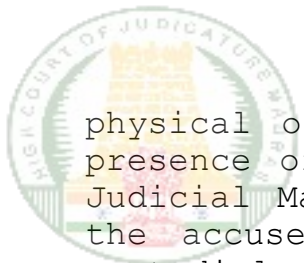
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had surrendered before the learned Judicial Magistrate, Dindigul. The Investigation Officer (P.W-14) Ponnusamy, Inspector of Police, Natham Police Station had filed petition seeking custody of the accused before the Court of the learned Judicial Magistrate. Accordingly, he was taken into custody and on his confession, the weapon/gun under M.O-1., was recovered in the presence of P.W-7-Village Administrative Officer and his Assistant, had prepared a seizure Mahazar under Ex.P-6. The confession leading to recovery in the presence of Village Administrative Officer was marked as Ex.P-5.

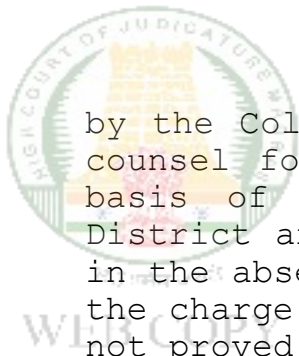
36.P.W.7 was not the Village Administrative Officer of the place of occurrence (i.e.,) Pallathukadu and he was the Village Administrative Officer of Nadupatti, that was the objection of the learned counsel for the appellant/accused. The Investigation Officer in order to satisfy himself regarding the witnesses who can assure the Investigation Officer that he will not turn hostile during the trial, seeks a government servant to be the witness to the confession statement. Here, confession leads to recovery of the weapon used and the accused had been secured on the application by the Investigation Officer in the Court of Judicial Magistrate seeking custodial interrogation. Therefore, the Investigation Officer will be careful during the investigation of the accused in his custody. P.W.7-Village Administrative Officer had clearly stated in the cross examination that there may be infirmities in his cross examination, but those facts will not affect the prosecution case. Since the Village Administrative Officer of the place of occurrence/Pallathukadu was not available, the Village Administrative Officer of Nadupatti was sought as a witness by the Investigation Officer and hence there is nothing wrong in it. Apart from that, the accused had earlier made a complaint and after custodial interrogation, he has given statement about torture. This is put up against the officials wantonly to escape from his criminal actions. If, what had been stated by the accused in the statement after completion of custodial interrogation to the Judicial Magistrate, had been proved, the learned Judicial Magistrate would have sent a report to the High Court regarding the torture on the body of the accused. The statement made by the accused to the learned Judicial Magistrate is rejected by the learned Principal Sessions Judge.

37.It is to be noted that as per Section 167 of Code of Criminal Procedure, if custodial interrogation is granted to the Investigation Officer, the Courts should follow the guidelines of the Hon'ble Supreme Court whereby the accused has to be produced before the Medical Officer and certificate to be obtained regarding the health status. Only then, he has to be produced before the learned Judicial Magistrate. In the presence of accused, a statement is obtained from the Investigation Officer that he will provide food and water to the accused during the period of detention for custodial interrogation, that the accused will not be put to



physical or mental torture by the Investigation Officer. In the presence of the accused, the statement is recorded by the learned Judicial Magistrate. When the custody is ordered, the counsel for the accused is permitted to interview him during the period of custodial interrogation for one hour or two hours on a specified time, usually in the evening by the order of the learned Judicial Magistrate as per his order granting custody. After completion of custodial interrogation, when the accused is handed over to the Judicial Custody to the Judicial Magistrate, again in the presence of accused, the statement of the Investigation Officer is recorded. Under these circumstances, the accused giving statement that he was tortured by the Investigation Officer, can attract any punishment on the Investigation Officer on a report of the Judicial Magistrate. That shows the Medical Officer who had examined the accused had not indicated any evidence regarding the physical torture. Not only that, the learned Judicial Magistrate himself or herself can observe the physical condition of the accused when the accused is produced before the Court. Therefore, the learned Judicial Magistrate was not convinced on the statement given by the accused that he was tortured by the Police during the custodial interrogation. As per the reported ruling of the Hon'ble Supreme Court, the learned Magistrates ought to be careful and very alert while granting custodial interrogation. Even Magistrates make visits to the Police Station to find out if the accused is treated properly. Therefore, the learned Judicial Magistrate had not given due weightage to the complaint under Ex.D-1 which is marked in the sessions trial. The complaint given by the accused after custodial interrogation that he was ill-treated. The objection of the learned counsel for the accused/appellant that the evidence of Village Administrative Officer (P.W.7) cannot be accepted is also found unreasonable. If a normal ordinary villager is taken as a witness to the recovery and confession, there is every possibility of him or her turning hostile during trial. Therefore, the Investigation Officer based on his experience takes the help of the Village Administrative Officer or any officials in the Government to assure the investigation proceeds on the correct path.

38.The learned Principal Sessions Judge, Dindigul in his Judgment clearly analysed the evidence and had arrived at a just conclusion. Regarding charge under Section 25 of the Arms Act, the Investigation Officer P.W-14 had not furnished the original copy of the proceedings of the District Collector, Dindigul granting sanction. Only a copy of the same was furnished and the prosecution was unable to explain about missing of the original Order granting sanction to investigate and prosecute the offence involving fire Arms. Sanction obtained by the Investigation Officer from the District Magistrate/District Collector to file charge sheet for which P.W-13, Shanmugavelu was the witness who was the Superintendent in the Office of the District Collector. P.W-13 only has signed the sanctioned Order under Ex.P-13 which was not signed



by the Collector. Therefore, the same was objected by the learned counsel for the accused/appellant before the trial Court. On the basis of the same, the learned trial Judge, learned Principal District and Sessions Judge in his judgment had clearly stated that in the absence of original sanction Order by the District Collector, the charge against the accused for the offence under the Arms Act is not proved by the prosecution. Therefore, the accused was acquitted from the charge under Section 25 of the Arms Act.

39.The Inquest conducted by the Investigation Officer is also objected. P.W-1 and one of Panchayatdars were there when the inquest was conducted in the scene of occurrence. P.W-1 in her evidence stated that she was still in Police Station till 1.00 p.m. The objection of the learned counsel for the appellant/accused is that she cannot be present in both places. Being an illiterate, she had mentioned in her evidence that she was in the Police Station till 01.00 p.m. and it is to be presumed that she accompanied the Investigation Officer to the scene of occurrence. As the scene of occurrence was in the forest, away from the main road which cannot be reached by the Investigation Officer on his own, P.W-1 guided him to reach the scene of occurrence. As per P.W.7-Village Administrative Officer, it is a hill track and not a main road. Therefore, P.W.7 parked his vehicle at Manickam Kadai and from where, he had reached the scene of crime, which was about 8 kms by foot. Therefore, the evidence of P.W-1 inspires confidence as it is found natural. The evidence of P.W-14-Investigation Officer also inspires confidence that the inquest was conducted in the scene of occurrence.

40.The witnesses P.W-1 and P.W.2 are the sister of the deceased and the son of the deceased. P.W-3 and P.W-4 are neighbours who heard gun-shot and proceeded to the scene of occurrence after hearing gun shots. P.W.7-Village Administrative Officer who was a witness to the confession leading to the recovery and seizure of M.O-1. P.W-10-Doctor and P.W-11-Forensic Expert had in their evidence clearly proved the case of the prosecution cogently beyond reasonable doubt. The fact that the FIR was delayed cannot at all be accepted considering the distance between the Police Station and the scene of occurrence viz., Pallathukadu. To reach Natham Police Station, one has to go by foot 8 kms through forest to Manickam Kadai on the main road. From there, 15 Kms by road to reach Natham Police Station by bus or other mode of transport. As per the FIR, it is stated that 9 kms from Police Station. As per evidence of P.W.7-Village Administrative Officer, 15 kms from Natham Police Station to Manickam Kadai. From there, 8 kms by walk through forest path to the scene of occurrence which P.W-1 could have travelled by foot 8 kms to the scene of occurrence, 15 kms, by bus. In the General Diary, the time is stated as 10.30 a.m., and in the FIR the time is stated as 12.30 p.m., As it is cognizable offence as per the Provisions of Cr.P.C., any Police Official can register the FIR

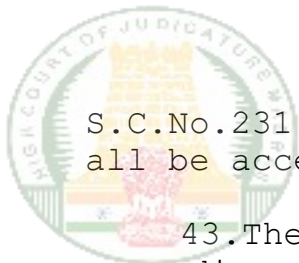


directly. (Only experienced police officials like Inspector, Sub Inspector of Police, who are available in the Station alone register the FIR which is due to the fear in them that when something goes wrong they will be punished by the Superiors by way of departmental actions. For a murder case, FIR had to be registered carefully.)

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41. Accordingly, P.W-12-Pandiammal had recorded the oral complaint as per Ex.P-1 and registered the FIR under Ex.P-11. It was registered by 12.00 noon and reached the Court of the learned Judicial Magistrate by 1 O' Clock, thereby there is a delay and therefore, the allegation by the defence that it is an embellished FIR cannot at all be accepted. Further, the contention that all the Prosecution Witnesses are related to each other, also cannot at all be accepted. P.W-1 had cogently stated in her cross examination that there was a dispute regarding the portion that was in the enjoyment of the deceased and accused that she too had encroached the land which was in the enjoyment of the accused who is a tenant of her portion of land and there had been dispute which was admitted by them. Those things will not affect the trial.

42. When the learned trial Judge had arrived at a logical conclusion on the basis of the materials available before him and on assessment of evidence, he had convicted the accused for the offences under Section 304 (2) of IPC instead of Section 302 of IPC proves that the learned trial Judge had appreciated the evidence properly as per the Indian Evidence Act. Only due to sudden provocation, he had caused the death of the deceased and therefore, the accused is convicted for the offence under Section 304 (2) of IPC and also prosecution had not produced the original sanctioned Order by the Collector. Therefore, the charge against the accused under Section 25 of the Indian Arms Act was not proved. Therefore, the accused was acquitted by the learned trial Judge regarding the charge under Section 25 of the Indian Evidence Act. The learned trial Judge appreciated the evidence as per the Provision of Indian Evidence Act. There is nothing perverse in the finding of the learned Principal Sessions Judge to treat the judgment and conviction recorded against the accused. As per the ruling of the Hon'ble Supreme Court, in appreciating the evidence by the Appellate Judge, if the learned trial Judge had appreciated the evidence properly and arrived at a just conclusion, the judgment of the learned trial Judge shall not be disturbed by the Appellate Judge, even though the Appellate Judge comes to a different view from that of the learned trial Judge in the same set of evidence. The learned trial Judge had the advantage of observing the demeanour of the witnesses and the accused. This advantage is not available to the learned Appellate Judge. Therefore, the finding of the learned trial Judge is to be given due weightage. In the light of the above rulings laid down by the Hon'ble Supreme Court and the arguments of the learned counsel for the accused/appellant that the judgment of the learned Principal District and Sessions Judge, Dindigul in



S.C.No.231 of 2010 is perverse and has to be set aside, cannot at all be accepted. Hence, it is rejected.

43.The arguments of the learned Government Advocate (Crl.Side) regarding the grounds of appeal and the evidence and the findings of the learned Principal District and Sessions Judge, Dindigul is accepted.

44. In the light of the above discussion, the point for consideration is answered in favour of the prosecution and against the accused. The judgment of conviction recorded by the learned Principal District and Sessions Judge is found not perverse warranting interference by this Court.

In the result, Criminal Appeal is dismissed. The judgment of the learned Principal District and Sessions Judge in S.C.No.231 of 2010 sentencing the accused to undergo 7 years of Rigorous Imprisonment is upheld and is hereby confirmed. This Court finds no merits in the appeal. The learned Principal District and Sessions Judge, Dindigul is directed to issue warrant against the accused to undergo remaining period of imprisonment. The period of detention already undergone by the accused/appellant is set off under Section 428 of Cr.P.C.

Sd/-

Assistant Registrar (CS-III)

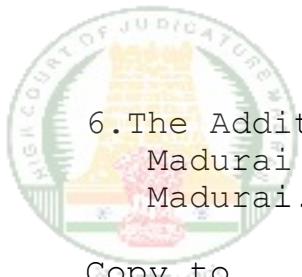
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/ /2021

Sub Assistant Registrar(CS)

To

- 1.The Principal District and Sessions Judge,
Dindigul District.
- 2.The Judicial Magistrate, Natham
Dindigul District.
3. Do through
The Chief Judicial Magistrate, Dindigul.
4. The Superintendent
Central Prison,
Madurai.
- 5.The Inspector of Police, Natham Police Station,
Dindigul.



6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

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The Section Officer, Criminal Section(2C)
Madurai Bench of Madras High Court, Madurai

CRL.A. (MD) No.24 of 2015
03.09.2021

TP (CO)
KB(08.11.2021) 19P 9C