



Bail Slip

Accused/Appellants Viz., Rajkumar and Kottaisamy @ Giri, were already released on bail vide this Court order dated 01.08.2018 in CRL MP(MD).4886 of 2018 in CRL A(MD)No.283 of 2018.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
19.03.2021	26.04.2021

CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE G.ILANGO VAN**

Crl.A. (MD) No.283 of 2018

1.Rajkumar
2.Kottaisamy @ Giri ... Appellants/Accused No.1 & 2
-vs-

State Rep. by
The Inspector of Police,
Checkanoorani Police Station,
Madurai District.
(in Crime No.456 of 2013) ... Respondent/Complainant

PRAYER: Appeal filed is under Section 374(2) Cr.P.C., to call for the records relating to the judgment passed in S.C.No.179 of 2015, dated 11.04.2018 on the file of the IV Additional District and Sessions Court, Madurai and to set aside the order of conviction and sentence and acquit the appellants/accused from all the charges.

For Appellants : Mr.E.Sathish Rajkumar
For Respondent : Mr.R.Anandharaj
Additional Public Prosecutor

J U D G M E N T

[Judgment of the Court was made by **G.ILANGO VAN, J.**]

This Criminal Appeal has been filed against the Judgment passed by the IV Additional District and Sessions Court, Madurai, in S.C.No.179 of 2015, dated 11.04.2018.



2.The case of the prosecution is that both the accused/appellants herein are friends and the mother of the first accused and the deceased had illegal intimacy and because of this intimacy, the first accused developed enmity against the deceased and he along with the second accused, who is his friend conspired to kill the deceased. In furtherance of which, the deceased was invited to the place of occurrence and both of them caused severe stab injuries, which resulted in his death on 17.12.2013 at about 09.00 p.m. instantaneously, they also removed the Cell phone, ATM card, Driving licence, Gold chain weighing 1½ sovereigns from the deceased and fled away from the place of occurrence.

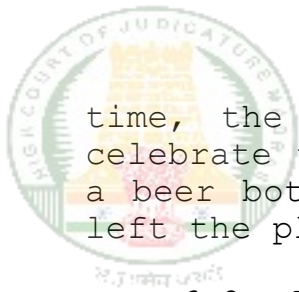
3.Based upon the complaint given by one, the father of the deceased, a case in Crime No.456 of 2013 was registered by the respondent police and after completing the investigation, filed the final report before the learned Judicial Magistrate No.II, Usilampatti, which was taken on file in P.R.C.No.37 of 2014 and after completing the formalities, the same was committed to the Principal District and Sessions Judge, Madurai, who in turn made over the matter to the IV Additional District and Sessions Judge, Madurai. After completing the formalities, both the accused were charged under Sections 120(b) r/w 302 IPC and 379 r/w 34 IPC.

4.The accused pleaded not guilty and to prove the charges against the accused. The prosecution examined 15 witnesses, marked 15 documents and 20 material objects were exhibited.

5.At the conclusion of the trial, the trial Court came to the conclusion that the charges against the accused under Sections 302 r/w 34 IPC and 379 r/w 34 of IPC was proved beyond all reasonable doubt and accordingly, convicted and sentenced the accused as mentioned above. They were acquitted under Section 120(b) r/w 302 IPC. Both the accused were sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- each for the offence under Section 302 r/w 34 of IPC and to undergo three years rigorous imprisonment for the offence under Section 379 r/w 34 of IPC. Challenging the conviction and sentence passed by the trial Court, both the accused approached this Court by way of filing this joint appeal.

6.The facts narrated by the prosecution through the evidence are as follows:

6.1.P.W.1 is the father of the deceased. P.W.2 and P.W.3 are the brothers. P.W.11 was the employee of the deceased in his work shop. The deceased was running a Two-wheeler work shop and water service station in Checkanoorani Village. In that work shop, P.W.11 was working as an employee. Both the accused persons were known to the deceased and they were friends. On a particular day, ie., on 14.12.2013 at about 07.00 p.m, both the accused came to the service station of the deceased, when P.W.11 was also present. At that



time, the first accused informed the deceased that they want to celebrate the birth day of the first accused. The deceased demanded a beer bottle. They handed over a beer bottle to the deceased and left the place.

6.2. After completing the work, the deceased went to the house of P.W.11 as usual for dropping him. When they were in the house of P.W.11, the first accused called the deceased and invited him to a place near A.S.College. The deceased left the house of P.W.11 and later, the deceased was found murdered on the next day by him.

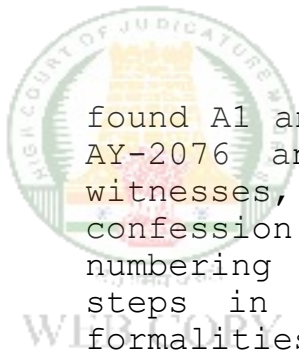
6.3. The deceased, who started from the house of P.W.11 reached the place of occurrence and both the accused were also present there. P.W.4 was the erstwhile Village Panchayat President of Kannanoor Village. P.W.5 was working as a Load man during the relevant period and P.W.4 and 5 were going to their land at about 09.45 p.m. On that particular day, they found the deceased along with two accused persons in the place of occurrence. According to P.W.5, P.W.4 enquired them and they informed that they are taking liquor. P.W.4 advised them to leave the place at the earliest and went away. On the next day, they found the deceased murdered in the place of occurrence.

6.4. In the meantime, P.W.1's wife called the deceased and the deceased informed that he will come within ½ hours. But the deceased did not return to the house. So, P.W.1 and P.W.2 were on search of the deceased. On the next day, ie., on 18.12.2013, when they were on search of the deceased, they found the deceased lying murdered in the place of occurrence at about 05.00 p.m. They also found a Two-wheeler in the place of occurrence and found missing of Gold Chain weighing 1½ of sovereigns, Cell phone, ATM card, which belongs to the deceased.

6.5. Immediately, he went to the respondent police and lodged a complaint under Ex.P.1 before the respondent police. P.W.2, the brother of the deceased also corroborated the evidence of P.W.1. P.W.3, the brother of the deceased on getting information about the occurrence had visited the place of occurrence and found the body of the deceased in the place of occurrence.

6.6. P.W.14 received the complaint from P.W.1 and registered the same in Crime No.456 of 2013 on 18.12.2013. The investigation was undertaken by P.W.15. The then Inspector of Police, Chekkanoorani, visited the place of occurrence at about 08.00 a.m. and prepared the Observation Mahazar and Rough Sketch. Recovered bloodstained soil and common soil, one brandy bottle, two beer bottles, one bloodstained iron rod, a Two-wheeler bearing Registration No.TN-57-S-1348 from the place of occurrence, conducted inquest upon the body of the deceased in the presence of Panchayat members and prepared a inquest report under Ex.P.14. Recording the statement of witnesses

<https://hccservicescourts.gov.in/hccservices/>, he went to Valangudi Village and in that place, he



found A1 and A2 driving a Two-wheeler bearing Registration No.TN-58-AY-2076 and he enquired both the accused in the presence of witnesses, namely, P.W.6 and one Rajendran and based upon the confession statement of first accused, he recovered the articles numbering about 10 under Mahazar Ex.P.3. He took up the following steps in sending the material objects to the Court and other formalities.

6.7.P.W.9-Doctor, conducted postmortem upon the body of the deceased on 18.12.2013 at about 1.20 p.m., he found number of stab and cut injuries on the head, neck, stomach etc., regions and according to his opinion, the death would have been caused because of the injuries suffered by the deceased 6 to 10 hours prior to his postmortem. The postmortem report and final report are marked as Ex.P.8 and Ex.P.9.

P.W.8 was presented in the place of occurrence, when the investigating officer, namely, P.W.15 visited the place of occurrence prepared the observation Mahazar and recovered material objects. P.W.12 was working as finger print expert during the relevant point of time and she examined the finger prints of the accused with that of the finger prints available in the iron rod and found that the impression found in the iron rod marked as R.2 match with that of the impression of right hand ring finger of the first accused. The reports are marked as Ex.P.10 and Ex.P.11.

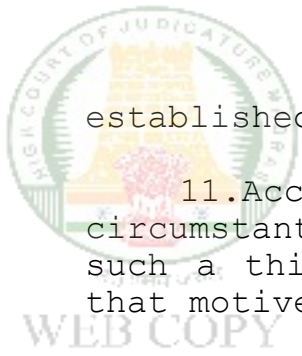
7.After completion of the evidence on the side of the prosecution, the accused were put on 313 of Cr.P.C., questioning and they denied the facts deposed by the prosecution witnesses.

8.After analysing the entire evidence on record, the trial Court came to the conclusion that the offence punishable under Sections 302 r/w 34 of IPC and 379 r/w 34 of IPC were proved beyond all reasonable doubts and sentenced them as mentioned *supra*.

9.The points which arise for consideration in this appeal are (i) whether the prosecution has succeeded in establishing the offence alleged against the appellants beyond all reasonable doubts? and (ii) whether the conviction and sentence imposed by the trial Court are sustainable?

10. Point No.1:-

The case solely rest upon the circumstantial evidence. There was no eye-witness to the occurrence to speak about as to what had happened on the particular time to the deceased. The prosecution would say that there was a previous enmity between the deceased and the first accused, since he was having illicit intimacy with his mother. But as mentioned by the trial Court, absolutely there is no evidence on record to show the alleged illegal intimacy. Even P.W.1 to P.W.3 have not spoken about such a relationship. Moreover, they have not also spoken anything about the motive between the deceased and the first accused. So, the motive has not been properly



established by the prosecution.

11. According to the appellants, when a case rests upon the circumstantial evidence, motive must be proved beyond doubt. But such a thing cannot be expected in all the cases. So, we can say that motive has not been properly established by the prosecution.

12. So, for the purpose of discussion, the events in a chronological manner are required to be re-stated as follows:

(i) On 17.12.2013 (wrongly stated as 14.12.2013 by P.W.11) at about 07.00 p.m. - both the accused came to the workshop of the deceased and invited him for celebrating the birth day of the first accused. This was witnessed by P.W.11.

(ii) After 07.00 p.m. - both the deceased and P.W.11 went to the late's house of P.W.11 for dropping. At that time, the first accused called the deceased and invited him to the place of occurrence. After that the deceased left the house of P.W.11.

(iii) At 09.45 p.m. - P.W.4 and P.W.5 saw the deceased with the accused in the place of occurrence. On enquiry, they informed P.W.4 that they came to the place of occurrence for having a drink. P.W.4 and P.W.5 left the place of occurrence.

(iv) During night hours of 17.12.2013 - P.W.1 and P.W.2 searched the deceased.

(v) At 05.00 a.m. on 18.12.2013 - P.W.1 and P.W.2 found the body of the deceased in the place of occurrence.

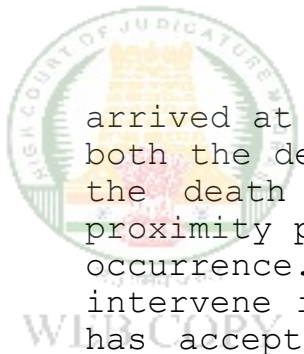
(vi) 04.30 p.m. on 18.12.2013 - P.W.14 arrested the accused near Mundavelanpatty. Recovered material objects M.O.1 to M.O.9 from the accused.

(vi) At about 09.00 p.m. on 18.12.2013 - P.W.1 identified M.O.1- Gold Chain, M.O.2-Cell phone and ATM Card belongs to the deceased in the Police Station.

13. So, through this sequence of events, the prosecution wants to establish the fact that the deceased was seen along with the two accused in the place of occurrence soon before his death. As per the evidence of the Doctor, who conducted the post-mortem, death would have occurred between 6 to 10 hours prior to his post-mortem. So, according to the prosecution, both the accused have murdered the deceased at about 09.00 p.m. on 17.12.2013.

14. Since there was no eye-witness to the occurrence, the exact time of the murder can be ascertained only from the evidence of the Doctor, who conducted the post-mortem. So, the question which arises for consideration is whether the proximity of the death with that of the presence of the accused in the place of occurrence where the deceased was murdered has been established by the prosecution.

15. The post-mortem was conducted at about 01.20 p.m. on 18.12.2013. The trial Court after going through the evidence of the Doctor and post-mortem, has recorded the finding that the death occurred 14 hours before the post-mortem and so it has

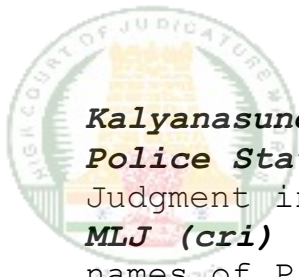


arrived at the approximate time of death at 11.45 p.m. At 09.45 p.m, both the deceased and accused were drinking liquor and at 11.45 p.m, the death had occurred. So, according to the prosecution, this proximity proved the involvement of the accused in the commission of occurrence. There is no possibility for any other person to intervene in between the time and caused the death. The trial Court has accepted this argument. The correctness of the findings, has been challenged by the appellants. Before that, whether the evidence of P.W.4 and P.W.5 can be believed must be discussed.

16.P.W.4 had deposed about the incident. But it was very clear in his evidence that they saw the deceased with two persons in the place of occurrence. At the time, P.W.5 was also present with him. But during Trial, would say that whether the two persons who were available in the place of occurrence, whether they were the accused or not? he is not known to him. P.W.5 has clearly deposed that he saw the accused along with the deceased in the place of occurrence along with P.W.4. Why P.W.4 has suppressed a part of the fact, is not known. But however, from the evidence of P.W.5, it is clearly established that he saw the deceased in the company of the accused in the place of occurrence at about 09.45 p.m on 17.12.2013. There is nothing on record to disbelieve his version.

17.According to the appellants, eventhough P.W.4 and P.W.5 have been examined before the inquest conducted by P.W.14, they were not cited as witnesses in the inquest report in fourth column. So, according to them, the last scene theory put up by the prosecution is not acceptable. The next argument is that as per the evidence of P.W.5, they saw the deceased and accused near a bus stop, wherein, as per the evidence of P.W.1, the body of the deceased was found near the kanmoi bund area. This contradiction has not been properly established by the prosecution. But P.W.4 would clearly say that all the three people were found in a thatched shed, so in view of the minor contradiction, it cannot be said that the place of occurrence has not been properly established by the prosecution. So, the argument that P.W.4 and P.W.5 would not have seen the deceased in the company of the accused in the place of occurrence cannot be accepted, is rejected.

18.The next argument is that, no identification parade was conducted by the investigation officer is also correct on record. As rightly pointed out by the trial Court, the investigation was not done with utmost involvement, which is required from a Police Officer, who conducts investigation in criminal cases like murder. So, the lapse in the part of the investigation officer to make arrangement for conducting the identification parade cannot be considered to be a fatal one to disbelieve the evidence of P.W.5. The appellants would rely upon the Judgment of the Madras High Court in the case of **R.Baskar Vs. State** in (2013) 2 MLJ (Cri) 673 and this subject is not applicable to the facts and circumstances of the case. So, also the Judgment of the Madras High Court in the case of

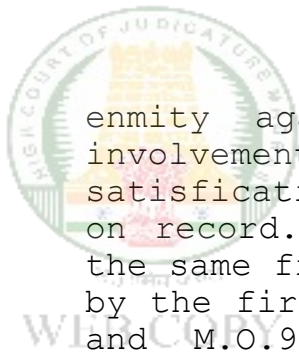


Kalyanasundaram and others Vs. Inspector of Police, , Kattchery Police Station reported in (2014) 4 MLJ (Crl) 59. On this score, the Judgment in the case of **Karvendran Vs. State** reported in (2014) 1 MLJ (cri) 111, for the purpose of argument that the absence of the names of P.W.4 and P.W.5 in the inquest report, makes the prosecution story unbelievable also cannot be accepted for the reasons stated above. We are of the considered view that the last scene theory projected by the prosecution has been proved beyond all reasonable doubt. The point which remains to be seen is the linking of the accused with that of the murder. It is a settled law that simply because the deceased and the accused persons were seen last together, it will not give an inference that they are the culprit. While analysing the case, which involves a heinous crime, utmost care must be taken by the Court to find out whether there was any link or missing link, if something is possible to intervene between the death and the last seen time then the benefit must be given to the accused.

19. So from this last seen theory alone, no inference can be drawn to the effect that the accused are the culprit.

20. The next link, which the prosecution tries to project is the recovery of material objects from the custody of the accused in furtherance of their statement.

21. Before, we go through the evidentiary value of the alleged confession statement, recovery etc., one important factor must be taken into account. Both the accused were arrested and from them, material objects were recovered. The confession statement of the first accused is marked as Ex.P.2. There was no confession statement from the second accused. But according to the investigating officer, M.O 8 and M.O.9, blue clour lungi, a bloodstained yellow color T-shirt are recovered from the second accused is mentioned. It appears that the second accused has not given any confession statement. Then how M.O 8, M.O.9 were recovered from him is a next point which arises for consideration. The consequential point would be whether mere recovery of bloodstained T-shirt and lungi from the custody of A.2 will draw an inference that he has also joined in the murder. P.W.14 would say that the first accused gave a confession in the presence of the witnesses. At that time, the second accused handed over M.O 8 and M.O.9. Except this piece of evidence, there is no connecting link between the occurrence and the second accused. Except the last seen theory, there is no confession statement from the second accused, whether mere handing over of M.O.8 and M.O.9 would leave to an inference that he also joined the first accused in committing the murder is a question? which remains to be answered. The reason for them to take the case of the second accused, first is that, no recovery except M.O.8 and M.O.9 and no confession statement from the second accused. Moreover, the second accused except being the friend of the first accused, is not having any common motive or

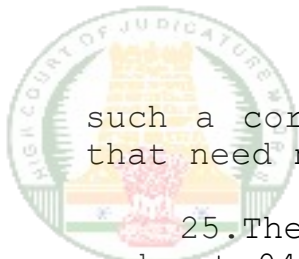


enmity against the deceased. In heinous crimes like murder, involvement of each and every accused persons must be proved to the satisfaction of the Court. To whom they belong, is also not clear on record. The investigation officer has not taken care to verify the same from the second accused. So, the confession statement given by the first accused cannot be used against the second accused. MO8 and M.O.9 were also sent to the Forensic Science Lab for examination. This yellow colour T-shirt is noted as item No.8 and lungi as item no 9. In Ex.P.5, the serological report, it is noted that it contains human bloodstains. But the result of grouping became inconclusive. But in lungi it contained human blood group A. The grouping of blood found in the dress materials of the deceased was found to be A-Group. But the grouping in M.O.9 (T-shirt) could not be found out. So, in such circumstances, whether M.O.9 can connect the second accused in the crime is a question which arises for consideration. As mentioned earlier, except the last seen theory, no other connecting link is available, whereas, connecting links are available against the first accused in the form of confession statement, recovery of material objects etc.

22. So ,We are of the considered view that eventhough, there is a possibility of the second accused to have participated in the crime, mere suspicion will not take the place of proof. So, on mere suspicion, the second accused cannot be held liable for the offences committed. So, the second accused is entitled for the order of acquittal and the trial Court went on the footing that both the accused were arrested and material objects were recovered from them in pursuance of the confession statement, but failed to take note of the important aspect. So, the conviction and sentence passed by the trial Court against the second accused is not valid under law, as it is not based on any legal evidence.

23.The next aspect is the connecting link of the first accused with that of the crime. As mentioned earlier, it is available in the form of confession statement and recovery of material objects.

24.To prove the arrest and recovery, the prosecution has relied upon the evidence of P.W.6, he would say that when the investigation officer arrested the accused, he was present in the place of occurrence. As found by the trial Court, this Court also find that nothing has been brought on record to disbelieve his evidence. Much arguments was advanced on behalf of the accused over the evidentiary value of P.W.6. According to the appellants, in Ex.P.2, the witness name was inserted. A perusal of Ex.P.2 shows that there are some corrections in the top portion of the statement. But, we find the signatures of the witnesses on the last page of the statement below the signature of the first accused, so and so Ex.P.3(atachi). From this small correction, we cannot infer that P.W.6 was not present as deposed by him, the trial Court has also rejected the argument of the appellants over this point, to which, this Court is also in full agreement. Although P.W.15, the investigation officer has denied

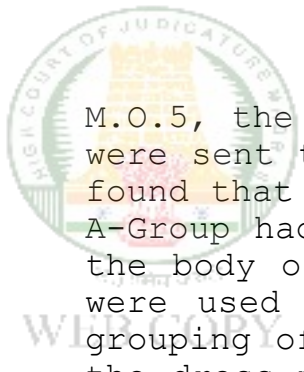


such a corrections, it is evident from the face of the record and that need not be given any importance.

25.The next argument is that the arrest, according P.W.15 was made at 04.30 p.m, but, whereas, in the confession statement, it is mentioned as it is 06.30 pm. In Ex.P.2., we find the time as 16.30 hours, which means 04.30 hours. In Ex.P.3, it is mentioned as 18.30 hours, which means 06.30 hours. So,there is no doubt there is a difference between these two documents. But, the statement was alleged to have been given at 04.30 p.m, when the accused were arrested and recovery mahazar has been prepared at 06.30p.m. So, arrest, confession and inquiry would have taken atleast 2.00 hours. So, we can infer that accused were arrested at 04.30 and seizure mahazars were prepared at 06.30 p.m. The time gap is natural which need not be given any importance. This aspect has been dealt with by the trial Court also, but has not appreciated this point by taking the time required for preparation. According to P.W.6, after completing the arrest and recovery, they went to the police station at about 05.30 p.m and even before that time, he signed in the recovery mahazar. So, according to the appellants, it shows that the arrest and recovery were not effected at the time and place mentioned by P.W.15. We are unable to agree with the learned counsel for the appellants on this point. The discrepancy with regard to the time gap will assume importance only when it is too long. But, here there is no such thing. Arrest was made at 04.30. Confessions are also recorded. Recovery was made. Authotchi was prepared. So, the events would have take atleast 2 or 3 hours. So, there is no much of time gap as mentioned earlier. So, this argument is also not acceptable and convincing.

26.The appellants would rely upon the following Judgments for the purpose of argument that arrest and recovery have not been satisfactorily proved in the case of **State of Harayana Vs. Ram Singh** reported in **2002 Cri. L.J. 987 (SC)**. According to the appellants, P.W.6 is an interested witness. Since he has admitted that one Police Constable by name Sami used to visit at petty shop and so he was an obliging witness to the police. But the cross-examination of P.W.6, would say that P.W.1 was known to him and they belong to the very same community and they are also related. So, from this only, we cannot infer that is an interested witness. The recovery made by P.W.15 from A-1 cannot be disbelieved on any ground. Since the gold chain, which was found missing from the deceased was identified by P.W.1 in the police station, soon after the arrest and recovery made by P.W.15. So, we are not convinced that the evidence of P.W.6 must be disbelieved as an interested witness. So, we are convinced with arrest, confession and recovery has been established by the prosecution beyond doubt.

27.Next point which arises for consideration is (i) whether this recovery will link the first accused to that of the crime?

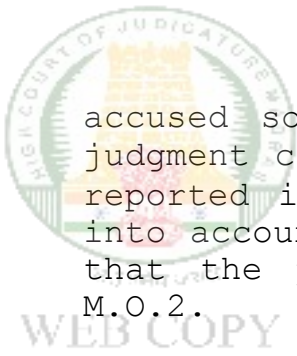


M.O.5, the knife, M.O.6-Green colour Shirt, M.O.7-Blue colour lungi, were sent to the Forensic Science Lab and after the analysis, it is found that the T-shirt and lunki, knife, chain, contained human blood A-Group had tallied with that of the dress materials collected from the body of the deceased (ie) Shirt, banian and so, these articles were used at the time of occurrence. The argument that the blood grouping of the deceased was not done, cannot be accepted, because, the dress materials contained the blood of the deceased, which were sent for analysis. So, the sample of the blood from the body of the deceased assumes no importance at all. So, these connecting links clearly establishes the fact that the first accused was the culprit. No other hypothesis is possible to explain this circumstantial evidence. Moreover, M.O.1, it was found missing from the body of the deceased. So, this *prima facie* shows the involvement of the first accused in the offence. The bloodstains found in the knife recovered from the first accused establishes the fact that it was used in the occurrence.

28.A perusal of the post-mortem report shows that totally 34 injuries were found in the body of the deceased. As narrated in the Judgment of the trial Court, which requires no duplication in this Judgment. In the light of the above said proved facts, the argument advanced by the appellants has to be addressed regarding ownership of a Two-wheeler found in the place of occurrence, which is marked as M.O.4. It is clearly admitted by P.W.15 that he did not take any steps to identify the ownership of M.O.4. But it does not affect the case of the prosecution over the incident. This is nothing but a lapse committed by the investigation officer, he has no bearing upon the occurrence. So also M.O.16. As per the case of prosecution M.O.16 was taken by the accused from the place of occurrence soon after the commission of murder. Since the ownership has not been established, the appellants had committed of theft is also not established.

29.P.W.15 has not sealed the material objects, which have been recovered from the place of occurrence and from the accused. The appellants would rely upon the Judgments in the case of ***Tulsiram Bhanudas Kambale and another Vs. State of Maharashtra*** reported in **2000 (Crl. J) 1566** and in the case of ***Kavinder and others Vs. State (NCT of Delhi)*** reported in **2005 Cri.L. J. 1589**. It is true that P.W.15 has not sealed the material objects in the place of recovery. This is a lapse that has been committed by the investigation officer and from this no inference can be drawn that these material objects have been created for the purpose of the case. So, this argument is also not convincing.

30.It is also on record to show that the Cell phone under M.O.2 was not identified by anyone. It is not established that it belongs to the deceased person. So, in the absence of any identification, the charge of the prosecution that M.O.2 was also stolen by the



accused soon after the murder, also is not established. So, the judgment cited by the appellant in the case of **Sakthivel Vs. State** reported in **2016 (1) MWN (Cr) 308 (DB)**, eventhough can be taken into account, that too, pointing out the limited purpose of showing that the prosecution has not established the proof of theft of M.O.2.

31.The next argument on the side of the appellants, is that eventhough P.W.1 and P.W.2 intimated the occurrence at 05.45 p.m. Complaint was given only at 07.30 a.m. But as per the evidence on record, the police were available in the place of occurrence even before 07.30 a.m and as per the evidence of P.W.3, the police recorded his statement at 07.30 a.m, the same was suppressed. But this fact has also been discussed by the trial Court. It is a settled law that any cryptic information with regard to the crime cannot be treated as First Information Report. So, what are all the enquiry that has been made by the police officials in the place of occurrence with a persons available at that time will not be taken as a First Information Report and this position is more or less well settled. Moreover, there is no reason for P.W.1 to revoke innocent persons into the occurrence. Even during in Ex.P.1, he has not implicated anyone. So, this argument is not also convincing.

32.The next argument is that, inquest was conducted at 10.30 a.m to 11.30 a.m. But P.Ws.1 to 3, 5 and 8 have stated that before 09.30 a.m., body was taken to the hospital. So, the inquest would not have been conducted as deposed by P.W.15. But these contradictions are not material. When the body was taken to the hospital and when the inquest was conducted have no bearing upon the occurrence. The subsequent events will not make the very occurrencive doubtful. So, we do not find any serious contradiction on this aspect, which makes the very occurrence doubtful.

33.Much argument was advanced over the list discrepancy of dress materials collected by P.W.15, sending the same to the Forensic Science Lab. A mistake was committed by P.W.15, while recording the description M.O.15 iron rod. In the Forensic Science Lab report, we find that it contained bloodstain, but whereas, in the Form-95 and recovery mahazar, P.W.15 has not mentioned the availability of bloodstains in the material objects. This also was a mistake committed by the investigation officer, which had has no bearing upon the case of the prosecution. Human errors are always possible while recording the information. Unless it is brought to the notice of this Court that it has been done with an ulterior purpose, no importance can be attached to it. Similarly, the arguments on the side of the appellants that in the serial numbers in Form-95 are not consecutive and white papers have been used and there is discrepancy with regard to Shirt description and Lungi description, eventhough there are true on records as a mentioned earlier. This small small mistakes committed by the investigation



officer, while preparing the documents cannot be given any importance unless they are material in nature no importance can be given.

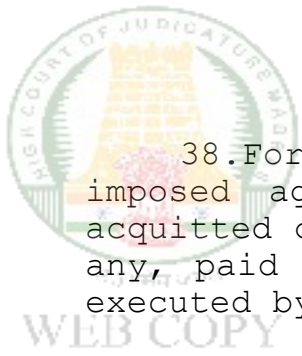
34. Similarly, the argument that the Two-wheeler pump petrol pouch which alleged to have contained the material objects have not been recovered, is also not convinced. Because, M.O.16 along with the petrol pouch has been recovered and marked, there is no necessity for recovering the petrol pouch separately. So, this argument is also not have any importance worth considering.

35. As per the case of the prosecution, at 08.30 p.m on 17.12.2013, the mother of the deceased called him over phone and he informed that he will return in short time. But the CDR details were not seized by the prosecution. But, we are of the considered view that this lapse has also been committed by the investigation officer. But P.W.1, has clearly deposed that his wife called the deceased at about 08.30 p.m to know his whereabouts.

36. One important connecting link that the prosecution has noted during the investigation, has not been properly proved before the trial Court, that is, the availability of finger print of the right hand finger of the first accused in M.O.15 iron rod. As mentioned earlier M.O.15 contained bloodstains of human A-Blood Group with that the deceased. It has also contained, two finger prints, which was marked as R-1 and R-2 by P.W.12. As held by the trial Court, where, when and how the finger prints of the accused were lifted by the prosecution has not been spoken by P.W.15 in the course of his evidence. Moreover, the Police Standing Order has not been properly followed by the investigation officer. So, the evidentiary value of this important link has been rejected by the trial Court on the ground that the same was not taken in the presence of the learned Judicial Magistrate as per the Identification of Prisoners Act 1920. But this important point was not argued on either side before this Court, since it was rejected by the trial Court.

37. But however from the other circumstances, the guilt of the first accused has been properly established beyond all reasonable doubts. No other hypothesis is possible. The important connecting link of recovery of material objects point the guilt of the accused to the occurrence. As mentioned earlier, more than 34 injuries have been inflicted upon the body of the deceased. Most of the injuries are aimed at face, neck. So, this shows the vengeance by which, the injuries have been inflicted. So, the manner in which, the offence has been committed clearly shows that it is a clear case of murder, which falls under the first limb of Section 300 of IPC punishable under Section 302 of IPC. So, none of the arguments advanced by the first appellant are convincing and so, the charge against the first accused stands established and conviction and sentence passed by the trial Court against him requires no interference and accordingly,

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38. For the reasons stated above, the conviction and sentence imposed against the second appellant are set aside and he is acquitted of all the charges framed against him. The fine amount, if any, paid by him, shall be refunded forthwith. Bail bond, if any, executed by him, shall stand cancelled.

39. With this modification, this Criminal Appeal is partly allowed. Appeal filed by the first appellant is dismissed, the conviction and sentence imposed on him are sustained. The Trial Court shall take steps to enforce the judgment, he is directed to surrender before the trial court immediately to serve out the sentence.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

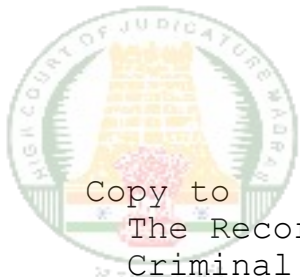
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Note :

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 IV Additional District and Sessions Court, Madurai.
2. The Principal Sessions Judge, Madurai.
3. The Judicial Magistrate No.I, Usilampatti, Madurai.
4. The Superintendent, Central Prison, Madurai.
5. The Commissionr of Police, Madurai.
6. The Director General of Police, Mylapure, Chennai.
7. The Inspector of Police,
Checkanoorani Police Station,
Madurai District.
8. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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CrI.A. (MD) No.283 of 2018
26.04.2021

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