



BAIL SLIP

(1) Jack Thomas, S/o Jayadhass, male aged about 34 years, (2) Rajappan @ Rasappan, S/o Paramadhas, male aged about 34 years released on bail vide Court order dated 24.07.2018 made in CrI.MP(MD) 5406 of 2018 in Criminal Appeal (MD) No.311 of 2018.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.10.2021

Pronounced on : 29.10.2021

C O R A M

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

AND

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal (MD) No.311 of 2018

1.Jack Thomas

2.Rajappan @ Rasappan

... Appellants/A1 and A3

-vs-

State of Tamil Nadu,
Rep. by the Inspector of Police,
Vadasery Police Station,
Kanyakumari District.
(Crime No.29 of 2010)

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, against the judgment of conviction and sentence dated 19.04.2018, passed in S.C.No.86 of 2011, on the file of the Sessions Court, Kanyakumari District at Nagercoil.

For Appellants : Mr.K.Vamanan

For Respondent : Mr.S.Ravi

Additional Public Prosecutor

J U D G M E N T

R.PONGIAPPAN, J.

The present appeal is directed against the conviction and sentence dated 19.04.2018, passed in S.C.No.86 of 2011, on the file of the Sessions Court, Kanyakumari District at Nagercoil.

2.The appellants 1 and 2 are arrayed as Accused Nos.1 and 3 in the above referred case. Along with two other accused [Now died], the present appellants stood charged for the offences punishable under Sections 120-B, 449, 302 and 302 read with Section 201 I.P.C. After full-fledged trial, the learned Sessions Judge, Kanyakumari District Court at Nagercoil, found the appellants/A1 and A3 guilty for the



offences under Sections 449, 302 and 201 read with Section 302 I.P.C., convicted and sentenced them as follows:-

Accused நபிகள்	Provision under which convicted	Sentence
Jack Thomas (A1) and Rajappan @ Rasappan (A3)	Section 449 I.P.C.	Five years Rigorous Imprisonment and fine of Rs.1,000/-, in default, to undergo 6 months simple imprisonment each.
Jack Thomas (A1) and Rajappan @ Rasappan (A3)	Section 302 I.P.C.	Life imprisonment and fine of Rs.1,000/-, in default, to undergo 1 year simple imprisonment each.
Jack Thomas (A1) and Rajappan @ Rasappan (A3)	Section 201 r/w. 302 I.P.C.	Three years Rigorous Imprisonment and fine of Rs.1,000/-, in default, to undergo 6 months simple imprisonment each.

3.Now, challenging the said conviction and sentence, the appellants are before this Court with the present Criminal Appeal.

4.For the sake of convenience and for easy reference, hereinafter the appellants 1 and 2 are called as 'Accused Nos.1 and 3'.

5.The relevant facts of the case, which gave rise to filing of this appeal, are necessary to be recapitulated for the disposal of this appeal.

(i) The fourth accused Ponammal is the wife of the deceased Sukumaran and P.W.1 Babu is his brother. Before six months from the date of occurrence, while the deceased Sukumaran was working in abroad, the first accused viz., Jack Thomas attended the domestic works in the deceased's house, and the fourth and first accused, developed intimacy, after knowing the said intimacy, the same has been intimated to the deceased by P.W.1. After returning from the abroad, the deceased Sukumaran warned the first and the fourth accused. On 07.01.2010 in the evening hours, after purchasing household articles, the deceased Sukumaran and P.W.1 returned to the house. While at that time, the deceased instructed P.W.1 to go to his house. On the next day, around 08.00 p.m., when P.W.1 went to the occurrence place, no one was present there. However, P.W.1 seen bloodstains in the Wall situated in the Courtyard. After seeing the same, he made search and ultimately, he went to the Police Station and lodged a complaint under Ex.P.1.

(ii) On receipt of the said complaint, P.W.15 - Thangaraj, the



then Head Constable, Vadasery Police Station, on 08.01.2020 registered a case in Crime No.29 of 2010 for Man Missing. The printed F.I.R. is marked as Ex.P.16. After registering the case, he forwarded a copy of the F.I.R. to P.W.20 for investigation.

(iii) P.W.20 - Jamal, the then Inspector of Police, Vadasery Police Station, on 08.01.2010 received the F.I.R. and took up the same for investigation. On the same day around 22.00 hours, he visited the scene of occurrence and in the presence of P.W.4 - Packiyamani and one Jeyasekaran, he prepared an Observation Mahazar under Ex.P.21. He drew the Rough Sketch and the same has been marked as Ex.P.20. He examined the witnesses and recorded their statements.

(iv) In the meantime, on 09.01.2010 around 07.00 a.m., when P.W.3 Natarajan, the then Village Administrative Officer was in his residence, one Arockiyadoss, who is the Panchayat Ward Member, produced the first and the fourth accused along with two children, who were born to the deceased and the fourth accused. At that time, the first accused Jack Thomas gave extra judicial confession statement before P.W.3, wherein he admitted the illegal intimacy with the fourth accused and about the commission of offence.

(v) After recording the said confession statement [Ex.P.6], P.W.3 prepared a special report under Ex.P.2 and along with the said report, he produced the accused before P.W.20.

(vi) On receipt of the said report, P.W.20 altered the Section of law from Man Missing to Sections 120-B, 302 and 201 I.P.C. The alteration report was marked as Ex.P.22.

(vii) After altering the Section of law, in the presence of P.W.3 - Natarajan, and one Arockiyadoss, P.W.20 examined the first accused and recorded his confession statement [Ex.P.6], wherein also, he admitted the commission of offence. He has also stated about the material objects, which were hided after the occurrence.

(viii) Pursuant to the admissible portion of confession statement given by the first accused, P.W.20 recovered a Shirt [M.O.3] worn by the first accused, the Morinda Tinctoria Wooden log [M.O.2 - மஞ்சளத்தி மரக்கட்டை] used at the time of occurrence and the burned bed [M.O.4] under the cover of Mahazar Exs.P.3 to P.5, respectively. Further, in the confession statement, the accused gave information about the place in which the dead body of Sukumaran was buried and after acquiring the said information, P.W.20 submitted an application before the Doctor and the Tahsildar for conducting autopsy. On receipt of the said requisition, P.W.12 - Dr.Velmurugan reached the burial ground along with the Tahsildar and one another Doctor, wherein the first accused identified the place in which, the dead body was buried. Thereafter, the dead body was examined and P.W.12 Doctor found the following ante-mortem



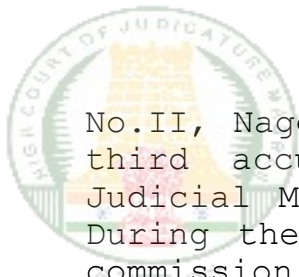
injuries:-

1. 6 x 4cm contusion seen over the left cheek.
2. 7 x 4cm contusion seen over the right cheek.
3. 5 x 2cm bone deep lacerated injury seen over the left side of chin. On examination, underlying lower jaw bone found fractured, at that site surrounding contusion noted.
4. 4 x 1 x 1/2 cm laceration seen over the tip of chin.
5. 8x 4 x 1/2 cm lacerated injury seen over the left side of fore head.
6. 6 x 4 cm contusion seen over the left side of fore head.
7. 6x 2 x 1/2 c.m. lacerated injury seen over the left parietal region.
8. 7 x 2 cm scalp thick lacerated injury seen over the left side of the head.
9. 25 x 15 cm contusion seen over the left side of front of chest.
10. 17 x 10 cm contusion seen over the outer aspect of left arm.
11. 26 x 7cm contusion seen over the outer aspect of front of left forearm.
12. 10 x 4 cm contusion seen over the dorsum of left hand.
13. 21 x 22cm contusion seen over the upper half of left side of back.
14. 32 x 23cm contusion seen over the lower half of left side of back.
15. 18 x 12cm contusion seen over the inner aspect of right arm and elbow.
16. 8 x 5cm contusion seen over the lower half of inner aspect of right forearm.

O/D. Chest and Abdomen:- Fracture of sternum in its lower surrounding contusion noted. Fracture of 05 and 06 vertebrae body with partial laceration of spinal cord.'

He collected visceral particles and sent the same for chemical examination, wherein it was identified that there was no poisonous substance found in the body of the deceased. Ultimately, both the Doctors, who conducted postmortem, issued a certificate that the death would have occurred prior to 2 to 4 days. During examination, before exhuming the dead body, the Doctor's team prepared a report, which was marked as Ex.P.12 and the postmortem and final report were marked as Exs.P.13 and P.14 respectively. Prior to the autopsy, the Tashildar, who was present along with the Doctors, conducted an enquiry and prepared an inquest report and the same has been marked as Ex.P.8.

(ix) In continuation of investigation, P.W.20 examined the witnesses and recorded their statements. On 25.01.2010, he submitted an application before the learned Judicial Magistrate



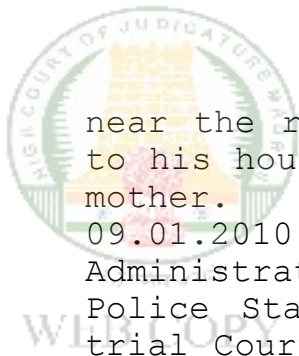
No.II, Nagercoil, wherein he prayed to hand over the custody of the third accused, who voluntarily surrendered before the learned Judicial Magistrate and the said petition was ordered accordingly. During the time of police custody, the third accused admitted the commission of offence and gave a confession statement and the same has been recorded in the presence of witnesses. Pursuant to the said confession statement, the third accused brought P.W.20 to his house, wherein, he identified the blood stained Morinda Tinctoria Wooden log [M.O.1- மஞ்சளத்தி மரக்கட்டை] and Spade [M.O.8 - மண்வெட்டி] and after identifying the same, P.W.20 recovered the same under the cover of Mahazar Ex.P.25. The admitted portion of the confession statement given by the third accused was marked as Ex.P.24. He submitted an application before the learned Judicial Magistrate to send the material objects for chemical examination. In the said circumstances, since P.W.20 got transferred, he handed over the case records to P.W.21 for further investigation.

(x) P.W.21 - Rajendran the then Inspector of Police, Vadasery Police Station, after receipt of the case records, visited the scene of occurrence and after collecting the documents from the Forensic Science Department, came to the positive conclusion that the accused are all committed the offences under Sections 120-B, 449, 302 and 201 I.P.C. and filed final report accordingly.

6.From the above materials, the trial Court framed charges against the accused under Sections 120-B, 449, 302 and 302 read with Section 201 I.P.C. All the accused denied the same as false. Hence, they were put on trial. In the course of trial proceedings, in order to prove their case, on the side of the prosecution, 21 witnesses were examined as P.W.1 to P.W.21 and 26 documents were exhibited as Exs.P1 to P.26, besides 8 Material Objects [M.O.1 to M.O.8].

(i) Out of the said witnesses, P.W.1 - Babu is the brother of the deceased Sukumaran. He gave evidence in respect of illegal intimacy between the first and fourth accused and about the lodging of complaint before the respondent Police.

(ii) P.W.2 - Sivakumar, who is the son of the deceased, has spoken about the occurrence as, on 07.01.2010 when at the time he along with his mother [A4], father [deceased] and sister in the residence, around 11.00 p.m., the first accused Jack Thomas knocked the door, and his father opened the door, at that time, the first accused attacked the deceased with wooden log on his head. While at the same time, the second and third accused after broke open the back door, entered into the house and assaulted the deceased with wooden log on his head and all over the body. When he attempted to inform the occurrence to P.W.1, through telephone, the first accused criminally intimidated him and the fourth accused caught hold him. Resultantly, all the accused by using the bed sheet, brought the body of his father to the agricultural field and buried in a pit,



near the river bank. After the occurrence, the first accused came to his house and brought him to the hills along with his sister and mother. It is the further evidence given by P.W.2 that, on 09.01.2010 all of them were went to the house of Village Administrative Officer and in turn, they were all brought to the Police Station. According to him, M.O.1 and M.O.2 found in the trial Court are the wooden logs used by the accused at the time of occurrence.

(iii) P.W.3 - Natarajan, the then Village Administrative Officer, has spoken about the occurrence as, on 09.01.2010 around 07.00 a.m. one Arockiadoss, who is a Ward Member, the first and fourth accused, P.W.2 and one Vanitha, who is the sister of P.W.2, are all came there, and the first accused Jack Thomas gave a confession statement, wherein, he has stated about the illegal intimacy with the fourth accused. Further, he gave a confession statement, wherein he admitted the commission of offence that he along with the second and third accused, attacked the deceased and after the death of the said Sukumaran, they were brought the dead body to the river bank, and buried the dead body in the river bank.

(iv) P.W.4 - Backiya Mani is the witness to the Observation Mahazar. Before the trial Court, he has not given any evidence in respect of preparation of Observation Mahazar and therefore, he was treated as hostile witness, and in the cross-examination by the learned Public Prosecutor, he has not supported the case of prosecution.

(v) P.W.5 - Ayyappan, who is a witness for exhuming the dead body of Sukumaran, has not supported the case of prosecution. Though he was treated as hostile witness, in his cross-examination, he has admitted that at the time when the Police Officers and the Tahsildar took the dead body, he was available with them.

(vi) P.W.6 - Jansi is the neighbour of the deceased Sukumaran. She has also not given any evidence in support of the case of prosecution.

(vii) P.W.7 - Ramachandran, the then Tahsildar, has spoken about the requisition given to the hospital authorities for exhuming the dead body of Sukumaran and about the preparation of inquest report.

(viii) P.W.8 - Sekar @ Jai Sekar, who is the witness to the Observation Mahazar, has not supported the case of prosecution, hence, he was treated as hostile witness.

(ix) P.W.9 - Francis Mani, who is the witness to the Seizure Mahazar, has also not supported the case of prosecution. In otherwise, in respect of the alleged recovery, he has not given any evidence in support of the case of prosecution.



(x) P.W.10 - Dhas, who is the resident of Algankonam, has spoken about the exhumation of the dead body of deceased Sukumaran.

(xi) P.W.11 - Suyambu, the then Head Constable, gave evidence as on 09.01.2010, he handed over the alteration report to the learned Judicial Magistrate.

(xii) P.W.12 - Dr.Velmurugan, who attached to the Government Medical College Hospital, Kanyakumari District and conducted postmortem, gave evidence in respect of the injury sustained by the deceased. He has also spoken about the collection of visceral particles and about the issuance of postmortem and final reports. He gave opinion as, the death would have occurred prior to 2 to 4 days.

(xiii) P.W.13 - Shanmugam, who is a resident of Pandara Thoppu, gave evidence as, during the relevant point of time, the Investigation Officer in this case, prepared an Observation Mahazar in his presence.

(xiv) P.W.14 - Arumugam, the then Head Constable, Vadasery Police Station, has spoken about his presence during the time of preparing the Inquest Report by P.W.7 - Tahsildar Ramachandran. He has further stated in his evidence as, after exhuming the dead body, he collected the bed sheet, which was used to cover the dead body and a Towel, which found available along with the dead body and hand over the same before the Investigation Officer.

(xv) P.W.15 - Thangaraj, the then Head Constable, speaks about the receipt of complaint from P.W.1 and also about the registration of the case.

(xvi) P.W.16 - Kolappan, the then Head Clerk of the Judicial Magistrate Court No.II, Nagercoil, speaks about the receipt of material objects, which were collected by the Investigation Officer during the time of investigation. He has further stated in his evidence as, the material objects, which were received as above, are all sent to the Forensic Science Laboratory along with the letter issued by the learned Magistrate, for chemical examination.

(xvii) P.W.17 - Neelakanda Pillai, the then Assistant Director, Forensic Science Department, Madurai, speaks about the examination of material objects. According to him, he collected the following 7 material objects:-

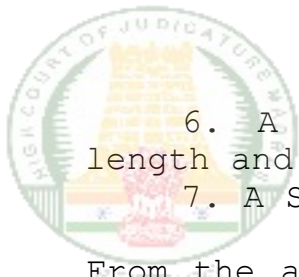
1. A red colour shirt with blood stains on the collar.

2. A Wooden log with blood stains measuring about 104 c.m. length and 15 c.m. circumference.

3. A little bit of burnt ash.

4. A pink colour floral bed sheet with two knots.

5. A damaged white colour towel with orange border.



6. A Wooden log with blood stains measuring about 83 c.m. length and 15 c.m. circumference.

7. A Spade''

From the above materials, in Item Nos.1, 2, 4 and 5, he identified human blood. He issued a Serology report stating that the blood found in the Shirt [M.O.1] belongs to 'B' Group.

(xviii) P.W.18 - Abathukaatha Pillai, who is the Police Photographer, has spoken about the occurrence as, during the relevant point of time, in view of the request made by the Investigation Officer, he went to the place of occurrence and took photographs.

(xix) P.W.19 - Sonamuthu, P.W.20 - Jamal and P.W.21 - Rajendran, who are the Police Officers, speak about the investigation and about the filing of final report.

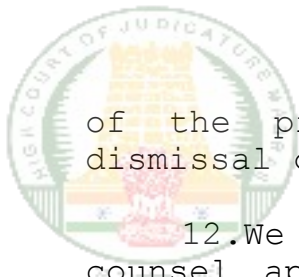
7.When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., they denied the same as false. However, they did not choose to examine any witness on their side or mark any document.

8.Having considered all the above and on considering the arguments advanced by the learned counsel on either side, the trial Court convicted and sentenced the accused as stated in paragraph No.2 of this judgment. Challenging the same, the accused are before this Court with this Appeal.

9.We heard Mr.K.Vamanan, learned counsel appearing for the appellants and Mr.S.Ravi, learned Additional Public Prosecutor, appearing for the State.

10.The learned counsel appearing for the appellants would contend that the evidence given by the prosecution witnesses are having lot of contradictions. The evidence given by the Investigation Officer in respect of recovery of material objects was not supported by the witnesses, who stood as witnesses, for preparation of recovery mahazar. Since the alleged extra judicial confession statement has been recorded after two days from the date of occurrence, the same cannot be used against the appellants. The trial Court without appreciating the said lapses, convicted the accused, which is liable to be set aside.

11.Per contra, the learned Additional Public Prosecutor appearing for the respondent Police would contend that the evidence given by P.W.2, who is the son of the deceased, is very clear and narrow for accepting the case of prosecution. Though the witnesses to the recovery mahazar are not in the way to prove the prosecution case, the evidence given by P.W.2 is sufficient to accept the case



of the prosecution in entirety and therefore, he prayed for dismissal of this appeal.

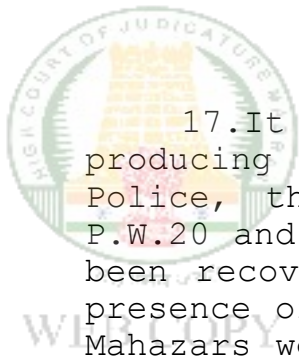
12.We have considered the rival submissions made by the learned counsel appearing on either side and also perused the materials available on record carefully.

13.Before the trial Court, the prosecution has attempted to prove their case with the following materials.

14.The first circumstance indicated by the prosecution is that, the accused herein are having the motive to kill the deceased. In this regard, P.W.1, who is the brother of the deceased, gave evidence as, since the deceased was working in abroad, by utilising the said opportunity, the first accused Jack Thomas developed illegal intimacy with the fourth accused and the same was condemned by the deceased. Further, it is undisputed fact that the other accused in this case are all friends of the first accused. Therefore, it is probable for the first accused to develop enmity against the deceased, since he opposed the illicit intimacy of the first accused with the fourth accused. In respect of the same, the evidence given by P.W.1 creates incriminating circumstances as the first and fourth accused herein are all having the motive to kill the deceased, for which, the service of second and third accused have been utilized by the first accused.

15.The second circumstance relied by the prosecution is that, after two days from the date of occurrence, both the first and the fourth accused, P.W.2 and his sister are all surrendered before the Village Administrative Officer [P.W.3] and the first accused gave extra judicial confession, wherein he admitted the commission of offence as alleged by the prosecution. Thereafter, P.W.3, who is the person recorded the extra judicial confession statement from the first accused, prepared a special report and submitted the same before the Inspector of Police, Vadasery Police Station along with the extra judicial confession statement recorded from the first accused. Before the trial Court, the said report prepared by P.W.3 and extra judicial confession statement given by the first accused were marked as Ex.P.2. In fact, in the said statement, the fourth accused Ponammal signed as a witness.

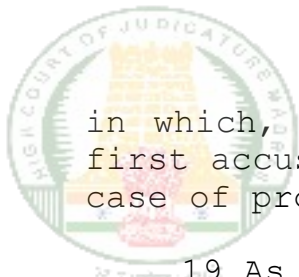
16.In this regard, on going through the evidence given by P.W.3, he has clearly stated as, during the relevant point of time, one Arockiadoss, who is a Ward Member, came along with the accused and P.W.2 to P.W.3's house. In order to corroborate the said evidence, the said Arockiadoss, who alleged to have produced the accused before P.W.2, was not examined as a witness. However, it is settled law that the extra judicial confession statement recorded from the accused is a weak piece of evidence and therefore, it needs corroborative piece of evidence.



17.It is the further case of the prosecution that, after producing the first and the fourth accused before the Inspector of Police, the first accused had given confession statement before P.W.20 and based on the disclosure statement, M.O.2 and M.O.3 have been recovered under the cover of Mahazars Exs.P.4 and P.3 in the presence of P.W.3. P.W.3 gave a categorical evidence that the said Mahazars were prepared in his presence and through which, M.O.2 and M.O.3 have been recovered. Therefore, in respect of recovery, the evidence given by P.W.3 is cogent and inspires the confidence of this Court as only based upon the disclosure statement given by the first accused, M.O.2 and M.O.3 have been recovered. The learned counsel appearing for the appellants would submit that the recovery of material objects based on the disclosure statement given by the accused alone does not connect the accused with the crime and therefore, the said evidence given by P.W.3 is not at all sufficient to accept the case of prosecution as only by using M.O.2 [wooden log], the accused attacked the deceased and caused his death. In this regard, he relied on the judgment of our Hon'ble Apex Court in the case of **Mustkeem alias Sirajudeen Vs. State of Rajasthan** reported in **AIR 2011 SCC 2769**, wherein it has been held as follows:-

''27.With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.''

18.Now, applying the ratio laid down in the above referred judgment to the case on hand, no doubt, the prosecution is having the duty to establish a close link between the discovery of material objects and its uses in the commission of offence. In this occasion, it is necessary to see the evidence given by P.W.2. P.W.2, who is the son of the deceased, was present in the occurrence place at the time of occurrence and he identified M.O.1 and M.O.2, and stated that, those wooden logs alone used by the accused for the commission of offence. Apart from that, after recovering the blood stained material objects, the same were sent for chemical examination, wherein P.W.17, the then Assistant Director examined the same and found the blood stains are human blood. In this regard, P.W.17 gave evidence and marked Serology Report under Ex.P.18. Now, on going through Ex.P.18, it is stated that the blood stains found in M.O.2 and M.O.3 are human blood. Being the reason that the said material objects were identified by the eye-witnesses, it should be presumed that those weapons alone are used during the time of alleged occurrence. Further, A1 alone identified the place,



in which, the dead body was buried. Therefore, in respect of the first accused, the chain of circumstances is fully in support of the case of prosecution.

19.As far as the third accused is concerned, it is the evidence given by P.W.20 Investigation Officer that, after taking police custody, during the time of interrogation, the third accused gave confession statement, wherein he admitted the commission of offence and thereafter, pursuant to the said confession statement given by him, he recovered M.O.1 and M.O.8 in the presence of P.W.9 - Francis Mani and one Muthusivan. During the time of trial, the said Muthusivan was not examined as a witness. However, the another witness, who signed as a witness for recovery of M.O.1 and M.O.8, was examined as P.W.9. While at the time of examining him as a prosecution witness, he has not given any evidence in respect of the confession statement given by the third accused as well as for the preparation of Seizure Mahazar [Ex.P.25]. Therefore, it is quite clear that the evidence given by the Investigation Officer in respect of recovery of M.O.1 and M.O.8 is not sufficient to connect the nexus between the third accused and the crime.

20.However, before the trial Court, the son of the deceased viz., Sivakumar was examined as eyewitness [P.W.2], and he has narrated the entire occurrence without any infirmity. Particularly, in respect of the presence of accused land 3 in the occurrence place, his evidence is very clear. On the other hand, on going through the entire cross-examination, nothing was available to impeach the credibility of his evidence.

21.In respect of the same, the learned counsel appearing for the appellants would contend that after the occurrence, P.W.2 is in the custody of P.W.1 and therefore, it is probable that he gave evidence as per the instruction given by P.W.1.

22.Now, on considering the said submission with the relevant records, it is not correct to state that after the occurrence, P.W.2 was residing with P.W.1. In fact, he was staying in the Hostel and continued his studies. Though he admitted in his cross-examination as, before giving evidence, the Police Officers brought him before the Public Prosecutor Office, the same cannot be sufficient to disbelieve his evidence. In fact, refreshing memory is admissible in evidence. In otherwise, in respect of the evidence given by the child witness, our Hon'ble Apex Court while at the time of deciding the case of **Hari Om alias Hero vs. State of Uttar Pradesh** reported in **2021 (2) SCC (Crl.) 440**, has held as follows:-

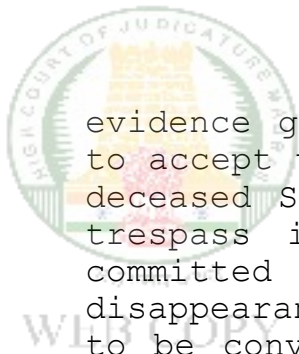
''The evidence of the child witness cannot be rejected per se, but the court, as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base



conviction by accepting the statement of the child witness. If the child witness is shown to have stood the test of cross-examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix-up what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not. The evidence of the child witness must be evaluated more carefully with greater circumspection because a child is susceptible to be swayed by what others tell him and thus an easy prey to tutoring. The evidence of the child witness must find adequate corroboration before it is relied upon, as the rule of corroboration is of practical wisdom than of law.''

23. So, in view of the above said judgment, before accepting the evidence given by P.W.2 with entirety, it is necessary to scrutinize the same with care and caution. As rightly pointed out by the learned Additional Public Prosecutor, the entire cross-examination of P.W.2 is no way diluting the evidence given by him in his chief-examination. In fact, in his chief-examination, he has narrated the acquaintance between the first accused and his mother [A4], and clearly deposed about the occurrence, about the overt act of the first and third accused. Apart from that, he identified the weapons, which were used for the commission of offence.

24. The only ground raised by the accused to disbelieve the evidence given by P.W.2 is that, he is a tutored witness. In this regard, as already observed, before giving evidence as P.W.2, he stayed in the Hostel and only for the purpose of giving evidence, he was brought to the Court and therefore, he cannot be termed as a tutored witness. Accordingly, the sole testimony given by P.W.2 is sufficient to accept the case of prosecution and the same is an additional evidence for the circumstances projected by the prosecution. Accordingly, we are of the considered opinion that the



evidence given by P.W.2 and other circumstances are all sufficient to accept the case of prosecution that with an intention to kill the deceased Sukumaran, all the accused in this case, committed house-trespass in order to commit the offence punishable with death, committed death of deceased Sukumaran and afterwards, causing disappearance of the evidence. Therefore, all the accused are liable to be convicted under Sections 449, 302 and 201 read with Section 302 I.P.C.

25.Now, turning to the point of quantum of punishment, the trial Court awarded maximum of life sentence for the offence under Section 302 I.P.C. Here, it is a case, due to the act of the appellants, the family of the deceased Sukumaran would suffer without any means. Now, the children born to the deceased Sukumaran are in the custody of others and thereby, their future is in question. Accordingly, we are of the opinion that the offence committed by the accused is grave one and therefore, we do not find any reason to interfere with the quantum of punishment awarded by the trial Court. Accordingly, this Criminal Appeal is dismissed. The conviction and sentence imposed on the appellants by the trial Court dated 19.04.2018, in S.C.No.86 of 2011, is confirmed. Bail bonds, if any, executed by the accused shall stand cancelled. The trial Court is directed to secure the appellants and commit them to prison for undergoing the remaining period of sentence.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

- 1.The Sessions Judge,
Kanyakumari District at Nagercoil.
2. The Chief Judicial Magistrate,
Kanyakumari at Nagercoil.
3. The Judicial Magistrate No.2, Nagercoil.
- 4.The Inspector of Police,
Vadasery Police Station,
Kanyakumari District.
5. The Superintendent,
Central Prison, Palayam Kottai.

<https://hcservices.ecourts.gov.in/hcservices/>



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

7. The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.VAMANAN, Advocate (SR-33281[F] dated 29/10/2021)

Criminal Appeal (MD) No.311 of 2018

29.10.2021

RD/PM (24.11.2021) 14P 10C