



Bail Slip

The Appellant/Accused No.1 Anish aged about 28 years/2018 S/o.Arul was directed to release on bail order of the Court dt.17/12/2018 made in CrI.MP(MD)No.6111 of 2018 in CrI.A(MD)343 of 2018.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	03.03.2021
Date of Judgment	30.03.2021

CORAM

THE HONOURABLE MR.JUSTICE **K.KALYANASUNDARAM**

AND

THE HONOURABLE MR. JUSTICE **G.ILANGO VAN****CrI.A(MD)No.343 of 2018****and****CrI.MP(MD)No.4630 of 2020**

Anish : Appellant/Accused No.1

Vs

State represented by,
Inspector of Police,
Eraniel Police Station,
Crime No.212/2017,
Kanyakumari District.

: Respondent/Complainant

Prayer: Criminal Appeal filed under section 374 of the Criminal Procedure Code, call for records from the Lower Court and to duly set aside the judgment passed by the learned Principal District and Sessions Judge, Kanyakumari District, Nagercoil in S.C.No.172 of 2017 dated 05.07.2018.

For Appellant : Mr.R.Kathirvelu, Senior Counsel for
Mr.K.Prabhu

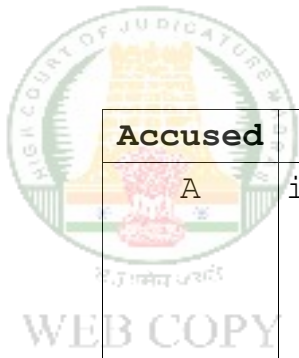
For Respondent : Mr.R.Anandha Raj,
Additional Public Prosecutor

J U D G M E N T

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

This appeal has been filed to set aside the judgment of conviction and sentence passed by the learned Principal District and Sessions Judge, Kanyakumari District, Nagercoil in S.C.No.172 of 2017, dated 05.07.2018.

2. The Appellant is arrayed as first accused in S.C.No.172 of 2017 on the file of the Principal District and Sessions Judge, Kanyakumari District, Nagercoil, dated 05.07.2018. He has been convicted for the offence u/s. 302 IPC and sentenced as follows:



Accused	Offence	Sentence
A	i) 302 IPC	Life Imprisonment and fine of Rs.2000/- in default to undergo 6 months Rigorous Imprisonment

3. Assailing the conviction and sentence, he has come up with this appeal.

4. The case of the prosecution:-

i) The deceased is the husband of P.W.1, the father of P.W.3 and brother-in-law of P.W.2, who are stated to be the eye-witnesses to the occurrence. Some 10 years prior to the date of occurrence, the deceased and the first accused had enmity and the deceased was made as an accused in the complaint, which was filed by the first accused. In that case, a warrant was issued to the deceased. He was arrested and remanded to the judicial custody on 26.04.2017. He was released on bail on 29.04.2017. But, came out of the prison on 30.04.2017, at 08.00 a.m.

ii) In the morning, on the same day, at about 05.30 a.m, the house of the first accused was damaged in fire. The fire was extinguished by the villagers and the fire service. So, because of this fire incident, A1 came to the house of P.W.1 and threatened her stating that he will do away with her husband since his house was burnt. The neighbours pacified him.

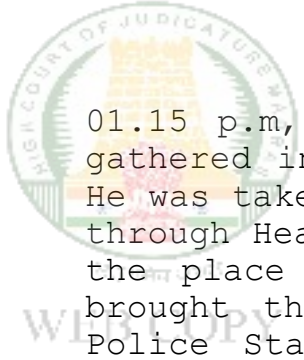
iii) When the deceased came to the house from the prison, they went to a poultry farm, which was run by his family and in that place, poultry feeds were not available. So, the deceased and P.W.1 to P.W.3, returning to the house for bringing poultry feeds in two separate two wheelers. When they were nearing the place of occurrence, there was a speed breaker, the three accused came in a motorcycle and way-laid the deceased at about 01.00 p.m. The deceased got down from the two wheeler and was assaulted by the first accused, who is the appellant herein with aruval, and caused various injuries all over the body and continued the assault aiming at the neck region of the deceased. This was witnessed by one Ratna and Pilomina. When the other accused warned the first accused to runaway from the place of occurrence and they also ran away.

iv) The neighbours have brought the ambulance and the deceased was taken to the hospital before the police man came to the place of occurrence. Along with them, all went to the Asaripallam Government Medical College Hospital, where he was declared dead.

v) In respect of which, P.W.1 lodged a complaint, EX.P.1 before the Sub Inspector of Police, Eraniel Police Station. It was reduced in writing by P.W.2 as narrated by P.W.1.

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

5. At about the same time, P.W.14, who was working as Special Sub Inspector in Eraniel Police Station was on patrol duty at about



01.15 p.m, in the place of occurrence, he saw a number of people gathered in the area and the deceased was lying with cut injuries. He was taken to the Asaripallam Government Medical College Hospital through Head Constable along with P.W.1 and P.W.2 and he remained in the place of occurrence by guarding the evidence and later, he brought the two wheeler bearing Registration No.75-B-1706 to the Police Station. Similarly, P.W.16, who was also attached to the Eraniel Police Station and working as Head Constable at the relevant point of time, was also on patrol duty and in the place of occurrence, he saw the deceased lying with cut injuries. When he arrived the place P.W.14 was also present there. Later, they took the deceased to the hospital along with P.W.1 and P.W.2.

6. P.W.20 was the Sub Inspector during the relevant time in Eraniel Police Station. When P.W.1 lodged a complaint, he registered the same, in Crime No. 212 of 2017 and sent the original to the Magistrate Court through the Head Constable namely, Ayyankannu. The printed First Information Report is marked as Ex.P.17. The occurrence was witnessed by P.W.2 and P.W.3. P.W.21 was working as the Inspector of Police, during the relevant point of time and he took up the investigation by receiving files at 09.00 p.m on 30.04.2017 and visited the place of occurrence and prepared the observation Mahazar and Sketch in the presence of the witnesses and they collected blood stained soil and common soil from the place of occurrence. After recording the statement of witnesses, on 01.05.2017 at about 07.00 a.m, he conducted inquest upon the body of the deceased. Ex.P.18 is the inquest report. Made a request for conducting the postmortem.

7. P.W.9, who was working as joint professor in Kanyakumari Government Medical College Hospital, on 01.05.2017, at about 12.30 p.m, had conducted the postmortem report is marked as Ex.P.10. He came to the findings, because of the cut injuries, suffered by the deceased, death would have been caused around 12.00 to 24 hours prior to the postmortem. The deceased name was wrongly mentioned in the postmortem certificate and later, it was corrected on the request made by the Inspector of police. The corrected report is marked as Ex.P.12.

8. P.W.21 continued the investigation and recorded the statements of witnesses. On 01.05.2017, at about 01.30 p.m, he arrested the first accused and recorded his confession statement. In pursuance of which, MO.1 was recovered and later, on 02.05.2017, at about 05.30 p.m, he arrested the other two accused persons, recorded the confession statement, recovered the pass-port of the appellant and also a bike by preparing proper Athachi. After completing the investigation, he filed a final report against 32 persons. He also made arrangements to send the recovered articles to the Court and thereafter, sent to the Forensic Lab for chemical analysis.

9. P.W.4 was known to the first accused and as well as the deceased. She did not witness the occurrence. But, on hearing the



occurrence, she went and saw the deceased lying with cut injuries and she is not residing near the place of occurrence.

10. P.W.6 was present in the place of occurrence. P.W.21 visited the place and prepared the Observation Mahazar etc., and also witness to the collection of blood stained soil and common soil.

11. P.W.7, who was working as Scientist in Forensic Lab, Tirunelveli, during the relevant time, examined the articles sent to him and his report is marked as Ex.P.5 & Ex.P.6. All the articles were examined and it contained human blood group of 'A'.

12. P.W.8 was witness to the arrest, confession and recovery made from the first accused. In pursuance of the confession statement given by the first accused, P.W.8 signed in the confession statement of Athachi and identified MO.1 aruval, Jeans pant, Shirt and vest belong to the first accused, which were marked as MO.8 to MO.10 respectively.

13. P.W.11 was witness to the arrest and confession recovery made from the other co-accused, who was acquitted by the Trial Court.

14. P.W.13 was witness to the conspiracy that was made between the first accused and the other accused persons over the plan to murder the deceased.

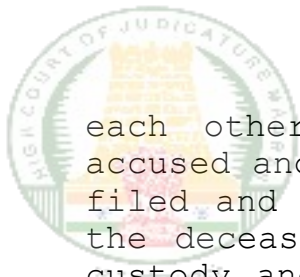
15. After completing the prosecution side evidence, the accused was put under Section 313 proceedings and they denied the version and no defence witness was examined on his side.

16. At the conclusion of trial, the Trial Court came to the conclusion that charges against the first accused, who is the appellant herein, was proved beyond all reasonable doubts. But, acquitted the other co-accused finding that the charges were not proved against them beyond all reasonable doubts and the first accused was convicted and sentenced to undergo punishment as mentioned supra. Challenging the conviction and sentence, the first accused is before this Court by way of this Criminal Appeal.

17. The prosecution in order to prove the charges framed against the accused, examined as many as 21 witnesses and marked 19 documents as well as material objects M.O.1 to M.O.13. No witnesses and documents were produced by the accused.

18. Heard Mr.R.Kathirvelu, the learned Senior Counsel appearing for the appellant and Mr.R.Anandha Raj, the learned Additional Public Prosecutor appearing for the respondent.

19. The parties belong to the same village and are known to



each other. Before the occurrence, a dispute arose between the accused and the deceased, in respect of which, C.C.No.59 of 2008 was filed and according to the prosecution, warrant was issued against the deceased and so, he was arrested and remanded to the judicial custody and as mentioned earlier, he was released on bail from the prison on the morning of the date of occurrence. So, it is seen that prior to this occurrence, there was an enmity between the accused and the deceased.

20. On the date of occurrence, at about 5.30 a.m., the house of the accused got fired. Whether it was accidental or set fire by any one is not known. Even as per the complaint, given by the mother of the accused, it is seen that none was suspected. According to the prosecution, the fire incident was the main reason for the murder. But, from the evidence on record, it is seen that the deceased was released from the prison only at about 08.00 a.m. But, as mentioned earlier, the fire incident took place at 05.30 a.m. So, according to the appellant, the motive projected by the prosecution that only to take revenge, he caused the murder is not believable. It is seen that only subsequent to the fire incident, the deceased was discharged or released from the prison, even though, the bail order was granted on the previous day. But, whatever it may be, it is on record to show that the deceased as well as the accused persons were not in good terms.

21. It is the evidence of P.W.5 that along with the villagers, they extinguished the fire. But, he denied that after the fire incident, the accused went to the house of the deceased and quarrelled with P.W.1 over the fire incident that they are the root cause for fire and they will do away the deceased. So, it is clear on record that the fire incident was not the root cause for the murder. But, as mentioned earlier, enmity existed between them. So, in this back ground, the occurrence must be analysed.

22. P.W.1 to P.W.3 are the direct eye-witnesses to the occurrence. As per their evidence, on the date of occurrence, the deceased P.W.1 to P.W.3, went to the poultry farm situated near by area, which belong to them and on noticing that poultry feeds were not available, returning to bring the same, when they were nearing the place of occurrence all the accused, who came in a two wheeler, way-laid the deceased. The first accused, who is the appellant herein, had assaulted the deceased with MO.1. So, believing the evidence of these eye-witnesses, the Trial Court convicted only this appellant by giving benefit of doubt and the other two accused were acquitted.

23. According to the appellant, the very presence of P.W.1 to P.W.3 in the place of occurrence is doubtful and for that purpose, they would rely upon the various circumstances, available in the case. So, in the light of the circumstances, brought on record by the accused during the trial proceedings, the evidential value of P.W.1 to P.W.3 must be analysed.



24. P.W.3 is the child witness, who is the son of the deceased and P.W.1. He was aged about 10 years old, when he was examined by the Court. The occurrence took place in the year 2017 and he was examined 2018. So, probably, he would have crossed the age of 9 on the date of occurrence. So, probably, he would have attained maturity of knowing what is wrong and right; what is true and false; He would say that on the date of occurrence, the appellant herein assaulted his father with aruval. Reading of his evidence does not indicate any thing, which make his evidence unbelievable. It appears that his evidence is natural, which is expected of a child, who is aged about 9 years, on the date of occurrence. According to the appellant, he being a child, he would have been tutored by the parents. During cross-examination he would say that when the ambulance arrived at the place, he was not available and in the chief examination, he has stated that P.W.1 handed and his brother to a neighbour after the occurrence. So, it is seen that soon after the occurrence, P.W.3 was taken to the house and left with a neighbour. So, this shows that his evidence is natural and believable. He has clearly identified the appellant that he only caused the assault.

25. Next, the evidence of P.W.1, she would say that when they were returning from the poultry farm in the place of occurrence, there was a speed breaker and in that place, the accused way-laid the deceased and alighted from the two wheeler. At that time, he was assaulted and the accused fled away from the place of occurrence and other two persons also fled away in a two wheeler. A neighbour, telephoned for ambulance service and before that, a police man arrived at the place, they took the deceased to the hospital. It is also the evidence of P.W.2 to the same effect.

26. The presence of P.W.2 is greatly disputed by the appellant on the ground that he does not belong to the place and he was residing in Thittuvilai Village, and so, his necessity of coming to the occurrence village going with the deceased and P.W.1 is not believable and according to the appellant, he being a chance witness, the necessity of his availability in the place, must be explained by him. During cross examination, he has given reason for his presence, he would say that at about 12.15 p.m, he received a call from the deceased and only on that basis, he went to the deceased's house and they were not available in the house. So, he went to the poultry farm, from there, all the four started their journey in separate two wheelers. I find nothing and untrustworthy in his evidence.

27. His presence in the place of occurrence is also corroborated by evidence of P.W.14 and P.W.16. P.W.14 would say that at about 1.15 p.m, on that date, he was on village patrol. At that time, he saw the deceased with cut injuries lying in the place of occurrence, was brought in ambulance along with P.W.1 and P.W.2. P.W.16, also corroborated P.W.14's evidence. So, the presence of P.W.2 in the place of occurrence, cannot be disbelieved and



disputed.

28. Now, coming back to the evidence of P.W.1, as mentioned earlier, he clearly deposed that only the death occurred due to cut injuries to her husband and he died on the spot. The absence of any blood stain in the dress materials of P.W.1 and P.W.2 cannot be a ground for disbelieving their presence in the place of occurrence.

29. In the light of the *prima facie* trustworthiness of P.W.1 and his evidence, has to be trusted.

30. According to the appellant, the very fact of availability of poultry farm was not verified or found to be true by the Investigation Officer. So, the origin of the occurrence itself doubtful. But, whether the poultry farm was available for the deceased persons are not? was not greatly disputed by the accused during the trial proceedings. It was not even suggested to P.W.1 that they were not owning any poultry farm as mentioned in the complaint, the only suggestion that was put is that the poultry feed will be brought by a man to the poultry farm. So, this suggestion now runs quite contra to the arguments advanced.

31. The failure on the part of the Investigating Officer to verify whether the poultry feeds were available or not in the poultry farm, cannot be ground for disbelieving the very nature of the occurrence.

32. It is also the further case of the appellant during argument that somebody would have caused murder in the place of occurrence and absconded. Due to previous enmity, the accused was implicated in this case. So, when this is the defence taken, failure on the part of the Investigating Officer to verify the availability or non-availability of the poultry feeds cannot be given importance at all and so, this argument is liable to be rejected.

33. The next argument is that who arrived first in the place of occurrence, is doubtful. According to him, P.W.14, only arrived in the place of occurrence on getting information that some unidentified dead body is lying in the place of occurrence with injuries. Only on that basis, he went to the place of occurrence, and even there is a contradiction between P.W.14 and P.W.16 over the fact of sending the deceased body to the hospital. But, a complete reading of the evidence of P.W.14 and P.W.16 does not indicate any contradiction. P.W.14 received instruction from the Police Inspector to take the body to the hospital. But, the Investigating Officer has denied that he gave such instruction to P.W.14. But, this is the simple contradiction, which need not be given any importance.

34. According to the appellant, in the Accident Register it was recorded that the deceased body was taken to the hospital by P.W.16. So, if it is true, then the availability of P.W.1 and P.W.3 in the place of occurrence is highly doubtful. But, from the facts narrated in the complaint, reading of P.W.14 and P.W.16 evidence

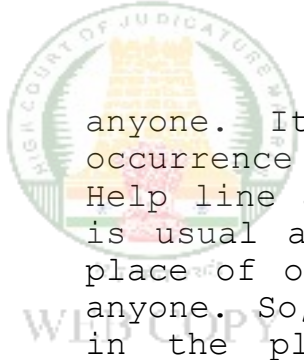
clearly stated the presence of P.W.1 and P.W.2 in the place of occurrence. So, this argument cannot be accepted.

35. The next contention is that the delay in lodging the First Information Report and in sending it to the Court creates doubt with regard to the presence of P.W.1 to P.W.3 in the occurrence place; The time of occurrence is 01.00 p.m, on 30.04.2016; First Information Report was registered at about 08.00 p.m, on that day; There is 7 hours delay in lodging the First Information Report and the same has reached the Court only on 10.05.2020, at about, 00.45 a.m, and this delay, can be attributed to the absence of P.W.1 and P.W.2 in the place of occurrence.

36. According to the appellant, if P.W.1 and P.W.2 were present in the place of occurrence they would have been immediately lodged the complaint. There is no necessity for waiting 8 hours to lodge the complaint. Moreover, the Court premises is located within a short distance from the Police Station. But, it has taken 2 ½ hours to reach the Court and this argument was negated by the Trial Court. The reading of the same, would show that the reason given by the Trial Court is probable one. As mentioned by the Trial Court, the mental condition underwent by P.W.1 because of the occurrence can be easily visualised by any ordinary man. Moreover, the delay in lodging the First Information Report, in sending to the Court will assume importance only when the possibility of roping an innocent person in the crime is natural. But, here, there is no such thing. So, the delay, appears to be natural and nothing incriminating to doubt it.

37. The judgment cited by the appellant on this point is reported in **Kanagaraj and Others Vs State rep by Inspector of Police CDJ 2011 MHC 3257**. In that case, the complaint was given at 9.30 a.m. But, the First Information Report was despatched to the Court at 07.00 p.m, taking into account the circumstance available in that case, it was held that the delay is important. Similarly, in **Marudanal Augusti Vs. State of Kerala 1980 SCC (Cri) 985**. In that case, there was a delay of 29 hours. Similarly, in a case reported in **Kozhi Alias Krishnan and Others Vs. State by Inspector of Police, Aiykkudi Police Station, Tirunelveli District 2000-1-L.W (CrI) 230**. There was long delay, since First Information Report was registered at 10.00 p.m on the previous day and reached the Court on the next day at about 4.55 p.m. As mentioned earlier, delay will assume importance not in all cases, but, only in cases, depending upon the facts and circumstance of each case. Here, there is no such inordinate delay and there is no such possibility of false implication of innocent persons.

38. The next argument is that the earlier statement was suppressed by the prosecution. For that purpose, they would argue that the statement given by them to a police man who arrived in the place of occurrence, soon after the occurrence was suppressed. But, reading of evidence of P.W.14 and P.W.16 would show that no such statement was recorded by them in the place of occurrence from



anyone. It is usual, now-a-days for the police, to reach the occurrence immediately, on information, because of patrol duties and Help line are available for 24 hours. In the present situation, it is usual and routine for the police to immediately to go for the place of occurrence, without waiting for any formal complaint from anyone. So, this sort of first visit and collection of information in the place of occurrence by the police party, even before registering the First information Report cannot be given too much importance that the police had started investigation and they recorded the statement even before the registration of the case. So, such a routine course adopted by the police cannot be taken to mean that they have started the investigation even before the registering the case. So, this argument also cannot be accepted.

39. Coming back to the evidence of P.W.1. It is the argument of the appellant that it is quite unnatural, because she did not anything, soon after the occurrence and so, her conduct is highly doubtful. As mentioned earlier, simply because, the dress materials of P.W.1 were not recovered by the Investigating Officer, no inference can be drawn that her conduct is unnatural.

40. The appellant would rely upon the following judgments of the Hon'ble Supreme Court:-

i) **State of U.P Vs. Gambhir Singh and Others 2005 (2) T.N.L.R 157 (SC)**

ii) **Mathura Yadav @ Mathura Mahato and Others Vs State of Bihar 2002 SAR (Criminal) 749**

iii) **Rambilas and Others Vs. State of M.P 1997 SCC (Cri) 1222**

- For the purpose of argument that comparative reading of P.W.1 to P.W.3 shows that they are genuine and trustworthy. But, a reading of evidence of P.W.1 to P.W.3, does not show any untrustworthy character. They are natural and convincing and nothing has been brought on record, which is capable of discrediting their evidence. Even though, in the judgements cited by the appellant, depending upon the peculiar facts of those cases, such a finding has been arrived. The same cannot be made applicable to the present case. In criminal cases, each and every case is unique in its own nature and no comparison can be made. If at all, only general propositions can be laid giving guidance to the Court, while appreciating the evidence. We are not convinced that the evidence of P.W.1 to P.W.3 are tainted with untrustworthiness.

41. The weapon:-

According to the prosecution, MO.1 weapon was used by the appellant in the occurrence. According to the prosecution, this was recovered from the accused through his confession statement. In oral evidence of P.W.8, nothing has been brought on record to disbelieve the evidence of Ex.P.8. P.W.8, would say that in his presence the accused was arrested and on his confession statement dress materials with blood stains and aruval were recovered from a bushes area near



Villukurichi. He appears to be an independent witness and nothing has been brought on record to discredit his evidence. MO.1 and dress materials, which are marked as MOs.8 to 10 contained blood stains.

42. P.W.7, the Scientist of Forensic Lab, Tirunelveli. According, to him, the materials examined by him shown that the blood stains containing human blood group 'A', belongs to the same person.

43. Ex.P.19 is the Serology Report, wherein we found MO.1 and dress materials, which belongs to the appellant contained 'A' group blood. Similarly, the vest, lungi and shirt, which were taken from the body of the deceased also contained 'A' group blood. So, Scientific evidence, clearly indicates that only the appellant was involved in the occurrence. Even though, eye-witnesses are prone to lying, but. Scientific evidence will not. This strong circumstance, which is available against this appellant, cannot be discarded on any ground. If really, he was not involved in the occurrence, his dress materials would not have contained the blood group, which belongs to the deceased.

44. Now, coming back to the medical evidence. P.W.9 was the Doctor, who performed the postmortem. His report is marked as Ex.P.10. Following injuries were found in the body of the deceased at the time of postmortem:-

1. 3 x 1 cm x scalp thick cut injury over the right side of front of top of head.
2. 8 x 4 cm x bone deep flapping cut injury over the right side of back of head.
3. 8 x 3 cm x scalp thick flapping cut injury over the left side of front of head and over the left side of forehead.
4. 5 x 2 cm x bone deep cut injury over the left side of head.
5. 6 x 3 cm x scalp thick flapping cut injury behind the left ear.
6. 6 x 2 cm bone deep cut injury over the left side of back of head.
7. 5 x 2 cm scalp thick cut injury over the back of head. It is 5 cm above the occipital protuberence.
8. 6 x 2 cm muscle deep cut injury over the right side of back of upper aspect of head.
9. 7 x 2 cm x calp thick cut injury over the left side of back of head and left external ear.
10. 8 cm long trailing wound over the back of lower aspect of neck.
11. 3 x ½ cm abrasion over the left side of back of neck.
12. 11 x 4 cm abraded contusion over the left supra scapular region.
13. 1 x ½ x ¼ cm two incised puncture wounds over the left scapular region.
14. 1 x ½ x ½ cm incised puncture wound with a trailing of 4 cm over the lower end over the right inter scapular region.
15. 4 x 3 cm abrasion over the right scapular region.
16. 5 x 2 x 2 cm curved incised puncture wound with trailing



of 7 cm seen over the outer end of wound over the right side of face 4 cm away from right angle of mouth.

17. 4 x 2 cm x bone deep cut injury over the right side of chin with trailing of 7 cm over the right end of wound.

18. 10 x 3 cm x cervical bone deep horizontal cut injury in front of upper aspect of neck. On examination the underlying wind pipe, food pipe, hyoid bone, C4 cervical vertebrae and blood vessels found cut.

19. 4 x 2 x 3 cm incised puncture wound with trailing of 4 cm over the posterior end of wound over the right side of neck. It is 6 cm below the lower end of right ear.

20. 4 x 2 x 2 cm incised puncture wound over the right side of neck. It is 2 cm below the previous injury.

21. 2 x 1 x 1 cm incised puncture wound over the right side of front of neck. It is 8 cm below the lower end of mandible. There is a trailing of 6 cm over left end of wound.

22. 7 x 3 x 4 cm cut injury over the front of lower aspect of neck. On examination it has cut underlying wind pipe, food pipe and blood vessels. It is 5 cm above the supra sternal notch.

23. 4 x 2 x 1 cm incised puncture wound over the right side of front of neck found overlapping the previous injury.

24. 2 x ½ cm x skin deep cut injury over the left collar bone region.

25. 6 x 3 cm x bone deep cut injury with trailing of 4 cm over the lower end over the outer aspect of top of left shoulder.

26. 6 cm long trailing wound in front of left shoulder.

27. 8 cm long scratch abrasion over the outer aspect of left shoulder.

28. 6 x 5 cm abrasion over the outer aspect of upper half of left arm.

29. 2 x ½ x ½ cm incised puncture wound over the outer aspect of middle of left arm. There is a trailing of 4 cm over the posterior end of wound.

30. 1 x ½ cm x skin deep incised puncture wound over the outer aspect of lower third of left arm.

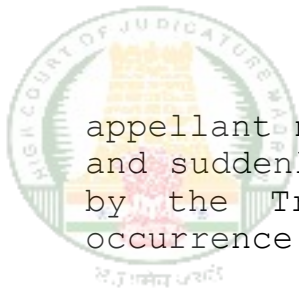
31. ... x 4 cm x bone deep napping cut injury over the back of left elbow. On examination the upper end of left ulna bone found cut.

32. 10 x 3 cm abrasion over the back of upper half of left forearm.

33. 4 x 2 cm x bone deep cut injury over the inner aspect of left wrist. On examination underlying left ulna bone found cut.

34. ½ x ½ cm two abrasions over front of left knee.

45. We find 34 injuries on the body of the deceased and most of the injuries were found on the neck and head region. It is the case of the prosecution that MO.1 caused these injuries. But, according to the appellant most of the injuries found on the body of the deceased were stab injuries and those injuries would not have been caused by MO.1, as a rule would cause only cut injuries and not puncture or stab injuries. We find that the injuries Nos.13, 14, 16, 19, 21, 23, 29 and 30 are punctured wound. So, according to the



appellant more than 1 weapon would have been used in the occurrence and suddenly he would not have been the culprit. But, as pointed out by the Trial Court, we find puncture marks in the place of occurrence.

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46. As mentioned in the observation mahazar (Ex.P.3), prepared by P.W.21, when MO.1 was used in the assault, it also created impression in the place of occurrence and because of the force, the tip of MO.1 curved. So, this also suggest that punctured injuries were caused by the tip of MO.1. The non mentioning of the speed breaker found in the place of occurrence stated by P.W.1 need not be given any importance. Availability of speed breaker was not the reason for the occurrence. So, it is only insignificant matter, which need not be given any attention. This argument on the side of the appellant cannot be accepted for the reasons stated above.

47. The non-examination of the independence witnesses need not be given any importance. The non examination of one Bilomina does not affect the case of the prosecution. The last argument that was advanced by the appellant is that by giving the benefit of doubt given to the other accused must also be extended to this appellant also. But, the theory of conspiracy was disbelieved by the Trial Court and the evidence produced by the prosecution to prove the same was found to be unbelievable. On that ground the benefit of doubt was given to the other two accused. Moreover, they do not take any active part in the assault. Even as per the evidence of P.W.1 to P.W.3, they do not say anything about the involvement of the other two accused persons in the assault. They have simply stated that all the three accused persons came in a motorcycle and the appellant assaulted the deceased while the other two asked the appellant to run away from the place and also they fled away in a motorcycle. So, their participation in the assault is doubted. So, the argument that the same benefit should be extended to the appellant, cannot be accepted.

48. So, from the evidence of postmortem report in Ex.P.10, the weapon used for causing of injury shows that it is a case of clear intentional murder, which comes under first limb of Section 300 IPC.

49. The number of injuries found on the body of the deceased, clearly establishes the fact that what has been done by the appellant is not less than a barbaric act. It is established that he intended to chop the deceased into pieces. It is not less than an act of butchering, it requires no sympathetic consideration at all.

50. I find no reason to interfere into the conviction and sentence passed by the Trial Court.



51. In the result, the appeal stands dismissed. Conviction and sentence passed by the Trial Court are confirmed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Dss

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

To,

- 1.THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,
KANYAKUMARI DISTRICT,
NAGERCOIL.
- 2.THE INSPECTOR OF POLICE,
ERANIEL POLICE STATION,
CRIME NO.212/2017,
KANYAKUMARI DISTRICT.
- 3.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.
- 4.THE DISTRICT COLLECTOR
KANIYAKUMARI @ NAGARCOIL
- 5.THE DIRECTOR GENERAL OF POLICE
MYLAPORE CHENNAI
- 6.THE SUPERINTENDENT CENTRAL
PRISON PALAYAMKOTTAI
- 7.THE JUDICIAL MAGISTRATE
ERANIEL KANIYAKUMARI DIST.



8. THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMARI DISTRICT @ NAGERCOIL

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+1 CC to M/s.K.PRABHU, Advocate (SR-15109[F] dated 01/04/2021)

Judgment made in
Cr1.A(MD)No.343 of 2018
and
Cr1.MP(MD)No.4630 of 2020

30.03.2021

CN(20.05.2021) 14P 10C