



Bail Slip

The Appellant/Accused Muthumariyappan @ Immanuvel and Sathiyaraj @ Antony Accused 2 & 3 in CRL A(MD).50 of 2019 and Sudalaimani Accused No.I in CRL A(MD).61 of 2019 were directed to be released on bail by this court order dated 27.06.2019 and 20.09.2019 and made in CRL MP(MD).5389 of 2019 and 7579 of 2019 in Crl.A.(MD) Nos.50 and 61 of 2019 respectively.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.02.2022

DELIVERED ON : 23.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.A.(MD)Nos.50 and 61 of 2019

1.Muthumariyappan @ Immanuvel

2.Sathiyaraj @ Antony

... Appellants 1 and 2/
Accused Nos.2 & 3 in
Crl.A.(MD)No.50/2019

3.Sudalaimani

... Appellant / Accused No.1
in Crl.A.(MD)No.61/2019

Vs.

State Represented by:

The Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi,
Thoothukudi District.
(Crime No.69 of 2014)

... Respondent / complainant.
In both Crl.As

COMMON PRAYER: Criminal Appeals filed under Section 374(2) of Cr.P.C. against the judgment of conviction and sentence passed by the learned II Additional District and Sessions Judge, Thoothukudi, Thoothukudi District made in S.C.No.235 of 2016 dated 25.01.2019.

For Appellants : Mr.V.Kathirvelu,
(In both Crl.As) Senior Counsel for
Mr.Prabhu

For Respondent : Mr.T.Senthilkumar,
(In both Crl.As) Additional Public Prosecutor.



COMMON JUDGMENT

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

These appeals have been filed by the appellants/ accused Nos.1 to 3 as against the conviction and sentence, dated 25.01.2019, made in S.C.No.235 of 2016, by the learned II Additional District and Sessions Judge, Thoothukudi, Thoothukudi District.

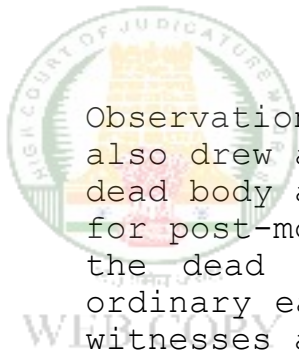
2. The appellants/A-1, A2 and A3 stood convicted and sentenced to undergo imprisonment as detailed hereunder:

	Conviction U/s.	Sentence of imprisonment	Fine amount
A-1 to A3	302 r/w 34 IPC	To undergo one life imprisonment	To pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for six months.
A-1 to A3	120(b) IPC	To undergo simple imprisonment for two years	-

(Both the sentences were directed to run concurrently.)

3. The brief facts of the prosecution is as follows:

The deceased Soundararajan @ Soundar is the son of P.W.2 and P.W.3. The deceased had an affair with one Mahalakshmi, who is A1's aunt. On 20.01.2014, the dead body of the deceased was found by P.W.1. Previous day he was informed that as the deceased was trying to elope with the said Mahalakshmi. A1 appears to have sworn that he would kill the deceased and thereby scuttle the plans of the deceased to elope with Mahalakshmi. Thereafter, immediately P.W.1 lodged a complaint before the respondent police and the same was marked as Ex.P1. P.W.4 has also heard about the swearing by A1, in front of the shop, that he would kill the deceased. P.W.5 also heard the conversation among the accused that they will kill the deceased. On 19.01.2014, at about 10 to 11 p.m., while P.W.12 was coming back to home with P.W.13 from the salt-pan, they heard the cries of the deceased and with the help of torchlight, P.W.12 saw that A1 cutting the deceased in his neck along with two other persons. P.W.15, Sub Inspector of Police after receipt of Ex.P1, registered a case in Crime No.69 of 2014 under Section 302 IPC under Ex.P16-First Information Report and forwarded the FIR to the judicial Magistrate and copies to the superior officer. P.W.16, Investigating Officer after receipt of the FIR, took up the investigation, went to the place of occurrence and prepared



Observation Mahazar-Ex.P17 in the presence of P.W.6 and P.W.7. He also drew a rough sketch under Ex.P18 and conducted inquest over the dead body and prepared inquest report under Ex.P19 and sent the body for post-mortem with requisition-Ex.P.20 for conducting autopsy over the dead body. He has also seized the blood stained cloth and ordinary earth under M.Os.1 to 5 and recorded the statement of the witnesses and thereafter, he altered the crime under Sections 294(b) and 302 r/w 34 IPC under Ex.P21-alteration report. The Medical Officer who conducted autopsy has found the following injuries on the dead body of the deceased:

"1. A cut wound of size 34cms x 8 cms x 8cms seen in the front of neck 6 cms below the chin.

2. A cut wound of size 37 cms x 6 cms x 8 cms seen 0.5 cm below the injury no.1

3. A cut wound of size 34 cms x 6 cms x 7 cms seen 0.5 cm below the injury no.2

4. A cut wound of size 37 cms x 8 cms x 6 cms seen 1 cm below the injury no.3.

5. A cut wound of size 38 cms x 6 cms x 8 cms seen 0.5 cm below the injury no.4. The underlying food pipe, wind pipe and blood vessels found cut. C3 to C6 vertebra found cut.

6. A cut wound of size 10 cms x 2 cms x bone deep seen below the lower lip.

7. A cut wound of size 36 cms x 10 cms x peritoneal cavity deep seen above the umbilicus. Intestines found protruding through that. The margin of the wound is irregular.

8. A cut wound of size 6 cms x 2 cms x bone deep seen in the occipital region.

9. A stab wound of size 6 cms x 2 cms x abdominal cavity deep seen in the middle of right side of back.

10. A stab wound of size 3 cms x 0.5 cms x muscle deep seen in the right loin.

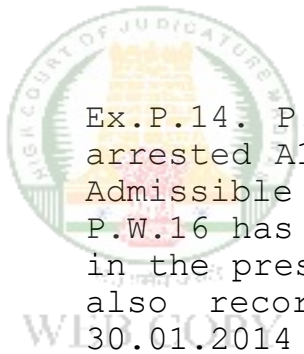
11. A stab wound of size 3 cms x 0.5 cms x chest cavity deep seen in the lateral aspect of left chest 17 cms below the axilla.

12. A stab wound of size 4 cms x 1 cms x bone deep seen 1 cm below the injury no.11.

13. A stab wound of size 6 cms x 2 cms x peritoneal cavity deep seen in the left side of abdomen.

14. A stab wound of size 3 cms x 1 cms x peritoneal cavity deep seen in the right side of abdomen."

He issued Ex.P7 post-mortem certificate opining that the deceased would appear to have died of shock and hemorrhage due to multiple injuries and death would have occurred 12 to 24 hours prior to the



Ex.P.14. P.W.16, in continuation of his investigation on 21.01.2014 arrested A1, A2 and A3 and recorded the voluntary confession of A2. Admissible portion of the confession of A2 is marked as Ex.P22. P.W.16 has also seized the knife- M.O.12, lungi-M.O.13, shirt-M.O.14 in the presence of witnesses and forwarded the same to the Court and also recorded the statement of the witnesses. Thereafter on 30.01.2014 he took the custody of A1 from the Court and examined him in the presence of P.W.9 and forwarded the material objects to the Court and recorded the statement and handed over the case file to his successor and thereafter, P.W.17 took up the case for further investigation and finally laid the final report.

4. The prosecution, in order to bring home the guilt of the accused examined as many as 17 witnesses as P.W.1 to P.W.17, marked 24 documents as Ex.P1 to Ex.P24 and 14 material objects as M.O.1 to M.O.14. After analyzing the oral and documentary evidence, the trial Court has found all the accused guilty under Sections 120(b) and 302 r/w 34 IPC. Assailing the same, the present appeals are filed.

5. The learned Counsel appearing for the appellants submitted that the trial Court has convicted the accused without any legal evidence. The only eye-witness relied upon by the prosecution is P.W.12. His evidence is highly improbable and unreliable. If really, P.W.12 has seen the accused, the conduct would be to inform the occurrence immediately either to the police or the villagers, but he was keeping silent about the occurrence and not informing to any one assumes significance and that itself makes his evidence unreliable. Further in his evidence also he has not implicated A2 and A3 and therefore, his evidence is highly unreliable. Similarly, the alleged motive projected by the prosecution is that the deceased tried to elope with one Mahalakshmi has not been established. It is his further contention that all the statements of the so-called eye-witnesses have been sent to the Court with inordinate delay which remains unexplained. He further submits that the so called arrest and recovery are also highly improbable. P.W.9 is a chance witness of the police. The learned Counsel appearing for the appellants therefore submitted that the so called seizure is also unreliable and further submits that the entire prosecution case is shrouded with serious doubt and the accused are certainly entitled to the benefit of doubt and therefore, he prays to allow the appeal.

6. The learned Additional Public Prosecutor appearing for the respondent fairly submitted that as far as A2 and A3 is concerned there is no material available. However, as against A1, P.W.12 has spoken about the occurrence. That apart, the motive aspect has also been spoken by P.W.1 and P.W.5 and the seizure has also proved by the investigating agency. The blood stain found in the material objects tally with the blood group of the deceased. The learned Additional Public Prosecutor therefore, submitted that as far as A1 is concerned the prosecution has proved the case beyond all reasonable doubt and hence, prays for dismissal of this appeal.



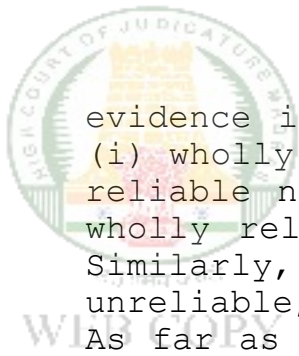
7. We have given our anxious consideration to the entire materials available on record and also the rival contentions made by the respective counsel.

8. The motive for the alleged murder of one Soundararajan @ Soundar was that he had developed intimacy with one Mahalakshmi. However, she was married to some one. After some time, she had deserted her husband. However, A1 continued to have the relationship with said Mahalakshmi. On 19.01.2014, P.W.1, P.W.4 and P.W.5 heard the conversation of the accused indicating that only if the deceased was alive he could elope with the said Mahalakshmi. Thereafter P.W.12-so called eye-witness appears to have seen the occurrence at about 10 to 11.00 p.m., while he was returning home from the salt-pan and with the help of torchlight, he found that A1 cutting the deceased in his neck along with two other persons. Though P.W.1 in his evidence has stated that the accused have made a statement that only if the deceased was alive he could elope with Mahalakshmi, P.W.2 and P.W.3-the parents of the deceased have not spoken anything about the alleged conversation, whereas P.W.4 in his evidence has stated that A1 in a drunken stage made a statement in front of the shop that he would do away the deceased. Though the evidence of the witnesses indicate as if they heard conversation on the previous day, no complaint whatsoever has been given to police.

9. It is the case of the prosecution that only after lodging of the FIR, they came to know about crime, whereas the evidence of P.W.1, P.W.4 and P.W.5 makes it very clear that they reached the spot at 06.00 a.m. on 20.01.2014 and within a half an hour the police came to the spot and enquired P.W.4 also. Therefore, the theory of the prosecution that they came to know about the crime at only 10.00 a.m. creates a serious suspicion in the mind of the Court. The evidence of the above witnesses makes it clear that in the early morning itself, the witnesses have been examined. The same clearly proves one fact that Ex.P.1 came much later after deliberation. Therefore, possibility of fabrication of the FIR in tune with the prosecution at a later point of time cannot be ruled out. The conduct of the witnesses who allegedly heard the alleged conversation in the previous night and not informing to any one also makes their evidence improbable. The only eye-witness relied upon by the prosecution is P.W.12.

10. According to P.W.12, on 19.01.2014 at about 10.00 to 11.00 p.m., while he was returning along with P.W.13 from the salt-pan, they heard the cries of the deceased and with the help of torchlight, he saw A1 cutting the deceased in his neck along with two other persons. It is relevant to note that postmortem report indicates that there were eight cut injuries not only in the neck but also in the head and stomach. Therefore, P.W.12's evidence that A1 cut the deceased only in neck is also unbelievable. The

<https://hcservices.courts.mil.in/hcservices/> be based on the solitary evidence provided such

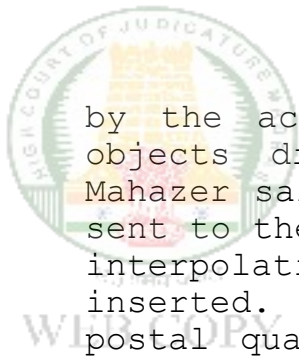


evidence is wholly reliable. Normally witnesses are classified as (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. If the statement of eyewitness is wholly reliable, there is no difficulty in accepting his version. Similarly, in the case where the evidence of the witness is wholly unreliable, the same will not serve any purpose to the prosecution. As far as the third category is concerned viz., if the evidence of witness neither wholly reliable nor wholly unreliable, then the prosecution has to rely upon other corroboratory evidences.

11. In assessing the evidence on the above touch-stone principles, when we look at the evidence of P.W.12, we are unable to persuade ourselves to bring the evidence in the category of wholly reliable or neither wholly reliable nor wholly unreliable but in our mind, his evidence would be under the second category that is wholly unreliable. For the reasons we may say that he has seen the alleged occurrence but he never whispered anything about such occurrence to any one. It is normal human conduct of any person, who witness such a ghastly occurrence, to inform the same to the villagers, panchayatars or to inform to the police but he has never whispered anything about the occurrence to any one. According to him, in his cross examination when he attended the funeral, he has informed the same to the police. According to the investigating officer, he examined P.W.12 on 21.01.2014. Therefore, the conduct of P.W.12, remaining silent and not informing the alleged occurrence, makes his evidence unreliable. His conduct is against the normal human conduct. Therefore, we are of the view that such weak evidence is not at all sufficient to base the conviction.

12. There is yet another fact that though the investigating officer recorded the statement of P.W.12 on 21.01.2014, the statement of P.W.12 reached the Court only on 31.07.2014 with inordinate delay which also remains unexplained by the prosecution and the same cannot be ignored. The purpose of despatching the materials collected during the investigation, including the statements recorded under Section 161(3) of Cr.P.C., is to rule out any fabrication and concoction at a latter point of time. Despite several pronouncements in this regard, the investigating agency in this matter was lethargic and statements have been sent to the Court with inordinate delay. This is also one of the reasons to suspect the evidence of P.W.12.

13. The other circumstances, relied upon by the prosecution is arrest and recovery of the material objects under Section 27 of Indian Evidence Act. The prosecution mainly relied upon the seizure effected from the accused viz., bloodstained shirt and lungi and also the weapons. P.W.9-VAO though he has supported the prosecution, his evidence makes it clear that he is the stock witness of the prosecution. Though biological report and serology report have been relied upon by the prosecution, the experts have not been examined



by the accused and seized from the accused, the other material objects did not contain the blood group. Though Ex.P2-Seizure Mahazer said to have been prepared on 20.01.2014, the same has been sent to the Court on 14.08.2014 and in the Seizure Mahazar, there is interpolation, whitener has been used and some other items have been inserted. The seizure is also said to have been effected near the postal quarters and from the bushes. When the area is open and accessible to public, the alleged seizure is also creates a doubt.

14. Be that as it may, the evidence of P.W.12 is totally unreliable and statement has also reached the Court with inordinate delay though he was allegedly examined on 21.01.2014. The inquest report and other documents have been sent on the same day but there is no reason as to why the investigating officer has not sent the 161(3) Cr.P.C statement of the eyewitness on the same day to the Court. This also creates serious doubt about the prosecution. Accordingly, we are of the view that the prosecution case is shrouded with serious doubt and does not establish the guilt of the accused beyond all reasonable doubt. Accordingly, we hold that the judgment of the trial Court is not on proper appreciation of evidence and we extend the benefit of doubt to the accused. Therefore, we are inclined to set aside the judgment of the Trial Court and acquit the appellants herein.

15. In the result, the Criminal Appeals stand allowed and the conviction and sentence imposed on the appellants/A1 to A3, by Judgment dated 25.01.2019, made in S.C.No.235 of 2016, on the file of II Additional District and Sessions Judge, Thoothukudi, Thoothukudi District are set aside and the appellants/A1 to A3 are acquitted. Fine amount, if any, paid by the appellants shall be refunded to them. Bail bond, if any, executed by them and the sureties shall stand terminated.

Sd/-

Assistant Registrar(CS-)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Vsm

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 II Additional District and Sessions Judge,
II Additional District and Sessions Court,
Thoothukudi, Thoothukudi District
- 2.The Judicial Magistrate No.I, Tuticorin.
- 3.The Chief Judicial Magistrate, Thoothukudi.
- 4.The Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi, Thoothukudi District.
- 5.The Superintendent, Central prison, Palayankottai.
- 6.The Inspector of Police, Soolakarai Police Station,
Virudhunagar.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to
The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

+2 CC to M/s.K.PRABHU, Advocate (SR-7997[F] dated 23/02/2022)

Judgment in
Crl.A. (MD) Nos.50 & 61 of 2019
23.02.2022

nsn(CO)
TR(04.03.2022) 8P 12C