



BAIL SLIP

1. Manikumar, Male, Aged 24 years (2019) S/o. Thangaraj, Accused No.4, Was released on bail order dated 31.10.2019 made in CRL MP(MD)No.7238 of 2019 in CRL A(MD).88 of 2019.

2. Amithabachan, Male, Aged 29 years (2019), S/o. Arumugam, Accused No.6, was released on Bail order dated 31.10.2019 made in CRL MP(MD).7238 of 2019 in CRL A(MD)No.88 of 2019.

3. Rajaravi, Male, Aged 25 years (2019), S/o. Murugan, Accused No.5, was released on Bail order dated 17.07.2019 made in Crl MP (MD).5887 of 2019 in CRL A(MD)No.88 of 2019.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.03.2022

DELIVERED ON : 06.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.A. (MD)Nos.87, 88 & 360 of 2019

Murugan	... Appellant / Accused No.1 in Crl.A.(MD)No.87/2019
Manikumar	
Rajaravi	
Amithabachan	... Appellants / Accused Nos.4 to 6 in Crl.A.(MD)No.88/2019
Krishnan	... Appellant / Accused No.2 in Crl.A.(MD)No.360/2019

Vs.

The State Rep. by:
The Inspector of Police,
Vijayanarayanam Police Station,
Tirunelveli District.
(Crime No.74 of 2018)

... Respondent / complainant
in all 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 IV Additional Sessions Judge, Tirunelveli, made in S.C.No.467 of 2018 dated 19.02.2019.



For Appellants:

Crl.A. (MD)No.87/2019: Mr.R.Ananad
Crl.A. (MD)No.88/2019: Mr.N.Anandhapadmanabhan
for Mr.P.Samuel Gunasingh

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Crl.A. (MD)No.360/2019: Mr.R.Anaand

For Respondents : Mr.S.Ravi,
(In all Crl.As) Additional Public Prosecutor.

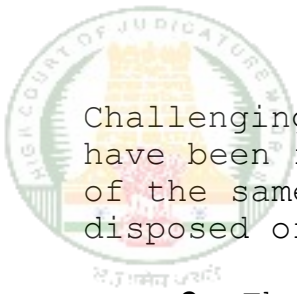
COMMON JUDGMENT

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

All these three appeals arising out of the judgment passed in S.C.No.467 of 2018 on the file of IV Additional Sessions Judge, Tirunelveli, dated 19.02.2019. A1 to A6 were tried for the offences under Sections 147, 148, 341, 332, 333, 302, 353, 370 IPC r/w 34 IPC. The trial Court found A1, A2, and A4 to A6 guilty of the offences under Sections 148, 302, 147 and 302 r/w 149 IPC. A3 was acquitted by the trial Court. The appellants/A1, A2 and A4 to A6 stood convicted and sentenced to undergo imprisonment as detailed hereunder:

	Conviction U/s.	Sentence	Fine amount
A-1 & A-2	148 IPC	To undergo three years rigorous imprisonment	----
	302 IPC	To undergo life imprisonment	To pay a fine of Rs.10,000/- each, in default, to undergo rigorous imprisonment for two years.
A-4 t o A-6	147 IPC	To undergo two years rigorous imprisonment	-----
	302 r/w 149 IPC	To undergo life imprisonment	To pay a fine of Rs.1,000/- each, in default, to undergo rigorous imprisonment for one year.

(Both the sentences were directed to run concurrently.)



Challenging the said conviction and sentence, the present appeals have been filed by the appellants. As all these appeals arising out of the same judgment, all these appeals have been heard together and disposed of by this common judgment.

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

(i) The deceased is a Grade I Police Constable attached with the Special Branch, working in Vijayanarayanam Police Station. On 06.05.2018 at about 10.40 p.m., he found A1 to A3, carrying illegal sand in a Tractor and immediately, to prevent such illegal mining, the deceased chased them in his Motorcycle. While chasing A1 to A3, he informed P.W.24, Inspector of Police, Vijayanarayanam Police Station, over the cellphone that A1 to A3 transporting stolen river sand in a Tractor bearing Registration No.TN 72 A 1661. Immediately, P.W.24 contacted P.W.1 and one another Constable Muthiah and instructed them to follow the sand smugglers. After receipt of such information from P.W.24, through the mobile phone, P.W.1 along with one Muthiah went in a Motorcycle from Kakan Nagar to Pondicherry Road. However, he could not find the deceased. Initially, he tried to contact the deceased over cellphone, which was ringing for some time and thereafter, it was switched off. He also went to the place of accused and found A1 to A3 were not present there.

(ii) The next day morning at 5.30 a.m., P.W.1 found the dead body of the deceased with injuries on the head in the land owned by P.W.7. He also found three pairs of slippers near the dead body, driving license of one Amithapatchan, cellphone of the deceased, torchlight and the Tractor, bearing Registration No.TN 72 A 1661 with axle cut Trailer. On seeing that, immediately, he lodged the complaint, which was marked as Ex.P.1. and he also found M.O.1 to M.O.18 in the place of occurrence.

(iii) In the meanwhile, P.W.2, who is the resident of the village and President of Society, on 06.05.2008 at 10.00 p.m., while he was returning from Valliyoor To Kakan Nagar, Pondicherry Road, went to P.W.7's land to assess the maize crop. At that time, he saw a Tractor with axle cut Trailer and 3 persons, who were travelling in the Tractor, got down from the Tractor and went to the maize field. Through the Tractor's light, he saw A1 to A3 hiding in the maize field. The deceased came in a Motorcycle chasing the Tractor and while he was searching the accused with his torchlight, all the accused came from the maize field. Besides A4 to A6 also came in a two wheeler and A1 and A2 started beating the deceased. While A3 held the hand of deceased A1, A2 and A4 repeatedly beat the deceased. A6 held the leg of the deceased and again A1, A2 and A4 beat the deceased with iron rod. Immediately, P.W.2 left the place out of the fear.



(iv) P.W.3 is the wife of the deceased. She identified the body and also identified the material objects which was used by the deceased.

(v) P.W.4 has purchased the Tractor-M.O.14 from one Murugan, which was taken by A1 for rent of Rs.3,000/- in order to transport the river sand. Since his vendor is facing the criminal case, the transfer of RC could not be effected. P.W.5-Murugan sold the Tractor to P.W.4 for a sum of Rs.3 lakhs on 09.09.2016.

(vi) P.W.8-Dharmaraj was constructing a house in Kakan Nagar and P.W.5 used to call him repeatedly and enquire as to whether he needed any sand for construction. On 06.05.2018, A5 repeatedly called him and he has also delivered river sand and P.W.8 has paid a sum of Rs.8,000/- to A5. Thereafter, on hearing a news that there was a police raid, he informed A5 not to go to river to take the sand. Thereafter, on 06.05.2018 at 11.00 p.m. A5 called him over phone and confessed that he killed a police constable. Again in the next day morning A5 called him and requested him not to divulge to any one.

(vii) According to P.W.9, A2 has purchased M.O.6-pair of slippers from his shop. Similarly, P.W.10 gave his slipper-M.O.7 to A3. P.W.11 has leased out the Tractor and Trailer to P.W.4 at the relevant point of time. Thereafter, he came to know that the tractor involved in the murder case. The Tractor and Trailer is M.O.14.

(viii) P.W.12-Joseph, while returning via Kakan Naggar, seen that the Tractor came in a high speed, which was chased by the deceased. The Tractor was driven by A1 and two other persons was there. One person was sitting in the Tractor and another one was sitting in the trailer and the tractor also went to the maize field.

(ix) P.W.14-Assistant Director of Forensic Department examined the viscera and issued Ex.P20-viscera report.

(x) P.W.15- Head Clerk of the Judicial Magistrate Court, Nanguneri sent the material objects as per the orders of this Court to the forensic lab and also sent a requisition to the finger print expert to compare the finger print lifted from the material objects with admitted finger prints of the accused.

(xi) P.W.16-Assistant Director of the Forensic Lab, examined the material objects and noted the blood stain and issued Ex.P.30-serology report.

(xii) P.W.17 conducted autopsy over the body of the deceased and found the following injuries:



would appear to have died of shock and hemorrhage due to head injuries. Death would have occurred 12 to 24 hours prior to autopsy.

(xiii) P.W.18-Deputy Superintendent of Police working in Finger Print Lab- went to the place of occurrence on 07.05.2018 and collected two finger prints (P1 and P2) from the Tractor bearing Registration No.TN-72-A-1661. Similarly he also collected finger print (P3) from the wheel spanner and sent to the lab for comparison with the finger prints sample of the accused. According to him, the three finger prints taken from the material objects viz., P1, P2 and P3 belonged to one person and the same corresponded to the finger print of A1 and issued Ex.P37-report in this regard.

(xiv) P.W.19-Judicial Magistrate, Valliyoor recorded the 164 Cr.P.C. statement of the witnesses.

(xv) P.W.21 is a Grade II Constable, working in Vijayanarayanam Police station. According to him, the deceased has called him and enquired whether two constables had already departed from the police station.

(xvi) P.W.23-Motor Vehicle Inspector examined the Tractor, two wheelers, license of A6 and also found that left side wheel was removed from M.O.14-Trailor. However, he has not found any damage to the two wheelers seized from the accused.

(xvii) P.W.24-Inspector of Police, received the complaint-Ex.P1 from P.W.1 and registered a case in Crime No.74 of 2018 for the offences under Sections 353 and 302 IPC under Ex.P.60 and thereafter altered into Sections 147, 148, 341, 332, 333, 302, 353, 379 IPC r/w 34 IPC and forwarded the FIR and complaint to the Court and sent copies to the Superior Officer.

(xviii) P.W.25-Inspector of Police after receiving the FIR, went to the place of occurrence, prepared Observation Mahazar-Ex.P5, Rough Sketch-Ex.P.62 and also seized the blood stained earth and ordinary earth under Ex.P.6. He collected all the material objects gathered in the place of occurrence in the presence of witnesses and conducted inquest over the dead body of the deceased and prepared inquest report under Ex.P.64, examined the witnesses and sent the body for Postmortem with the requisition.

(xix) When the investigation was in progress, A2 and A3 appeared before P.W.13 and A2 gave a confession admitting the offence. The same was reduced into writing, which was marked as Ex.P.9 and thereafter, A2 and A3 were taken to the police station and handed over to the Investigating Officer by P.W.13 with covering letter-Ex.P.10. The admissible portion of the confession statement of A2 was marked as Ex.P.67. The Investigating Officer arrested



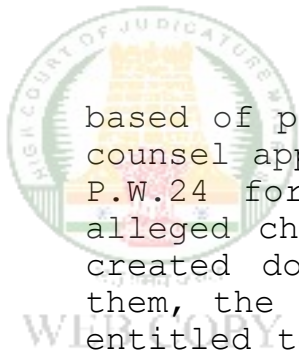
the accused and recorded their confession statements and pursuant to the same, he seized the material objects. After completing the investigation, he has laid the final report.

(xx) The prosecution, in order to bring home the guilt of the accused examined as many as 25 witnesses as P.W.1 to P.W.25, marked 77 documents as Ex.P1 to Ex.P.77 and 46 material objects as M.O.1 to M.O.46. On the side of the defence, no one was examined and four documents were marked as Ex.D1 to Ex.D4.

(xxi) After analyzing the oral and documentary evidence, the trial Court has found the accused A1, A2 and A4 to A6 guilty and accordingly, convicted and sentenced the accused as stated *supra*. Aggrieved over the said conviction and sentence, the appellants have come up with these appeals.

3. The learned counsel appearing for the appellants submitted that the entire prosecution is mainly based on the evidence of P.W.2 and P.W.12 and other circumstances. P.W.2's evidence, claiming to be an eyewitness, is highly unreliable and his conduct in remaining silent even after witnessing the alleged occurrence is against the normal human conduct. He has been examined by the police after 36 days of the occurrence. Therefore, his entire evidence is unbelievable and P.W.12's evidence is also highly doubtful. The learned counsel appearing for the appellants further submitted that the finger print reports have been rightly disbelieved by the trial Court. The alleged extra judicial confession given before P.W.13 has been given much emphasis by the trial Court. On the other hand, the evidence of P.W.24 proves the fact that A2 and A3 were arrested much prior to the so called extra judicial confession. The evidence of P.W.8 that A5 called him and requested him to receive the sand and has confessed the crime is highly doubtful. In fact, P.W.8 has called A5 several times. The call details relied upon by the prosecution proves otherwise. The evidence of P.W.2 that he visited the maize field at 10.00 p.m. to assess the value of the maize is highly unbelievable and further in the observation mahazar and rough sketch, there was no mention about the maize field the in the place of occurrence. Similarly, he was not the president of the society at the relevant point of time.

4. Further it is the contention of the learned counsel appearing for appellants that merely because there were some exchange of calls between the deceased, P.W.24 and P.W.1, it cannot be presumed that the contents spoken by P.W.24 and P.W.1 are true. The conversation has not been established. The report of Motor Vehicle Inspector do not show that the axle of the Trailer was cut. Similarly the observation mahazar also does not show the position of the dead body. Hence, it is submitted by the learned counsel appearing for the appellants that the trial Court has not appreciated the evidence properly and has convicted the accused



based of presumptions. It is the further contention of the learned counsel appearing for the appellants that the conduct of P.W.1 and P.W.24 for not taking any steps, even after coming to know the alleged chasing of the accused by the deceased in the night, also created doubt about the entire prosecution. Hence, according to them, the entire prosecution is highly doubtful and the accused are entitled to the benefit of doubt. They pray for allowing of these appeals. In support of the submissions, they have relied upon the judgment of the Hon'ble Supreme Court in **Satye Singh & another Vs. State of Uttarakhand** reported in **2022 Live Law (SC) 169**.

5. The learned Additional Public Prosecutor appearing for the State would submit that the deceased found that A1 to A3 were carrying illegal river sand in a Tractor and Trailer and the deceased chased them in his Motorcycle. While chasing them, he has informed the same to P.W.24 over cellphone and required him to send additional force. P.W.24, in fact, immediately contacted P.W.1 over cellphone. That apart, the deceased also contacted P.W.1 and P.W.21. In the mean while, P.W.2 and P.W.12 also seen the accused at the relevant point of time. The finger prints collected from the tractor tallied with the finger print of A1. That apart, the seizure of the material objects have been spoken by the witnesses. A2 and A3 has given extra judicial confession to P.W.13. Merely because some newspaper report shows that they arrested earlier, without examining any Reporter, such report will not have any relevance and the news cannot be relied upon. Hence, it is the contention of the learned Additional Public Prosecutor that the prosecution proved the case beyond all reasonable doubt. No explanation has been given by the accused for the blood stains found in the dresses. Serology report has clearly proved the origin of the blood found in the dresses worn by the accused. The call details also clearly show that there are several calls exchanged between the accused and hence, the appeal is liable to be dismissed.

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

7. The law was set in motion on the basis of the complaint-Ex.P1 lodged by P.W.1. It is the case of the prosecution that the deceased was a Grade I Police Constable attached with the Special Branch and he found A1 to A3 were carrying illegal river sand in a Tractor and he chased them. While chasing A1 to A3, the deceased called P.W.24 Inspector of Police over cellphone. P.W.24 immediately asked P.W.1-the Constable to follow the deceased. Accordingly, P.W.1 along with one Muthiah proceeded to the place where the deceased was proceeding, but, they could not locate the deceased in the night. However, P.W.1 found the body of the deceased on the next day early morning at 5.30 p.m. with injuries. The body was lying in the land of P.W.7. P.W.7 has also in his evidence stated



that dead body was found in his maize field.

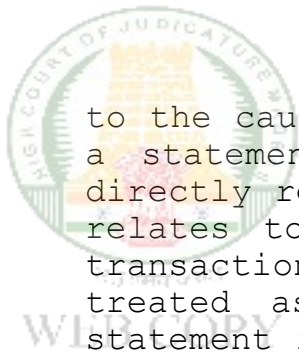
8. The evidence of P.W.24- Inspector of Police, who received the message from the deceased, clearly substantiated by the call details which was filed as Ex.P.73. The call details, appended with the certificate under Section 65-B of the Indian Evidence Act, 1872, show that the deceased has called P.W.24 at 22.36.44 hours. The call details proves the fact that the deceased called P.W.24 at the above time. Immediately, P.W.24 contacted P.W.1 through his cell phone number 9498193213 at about 22.37.52 hours and again P.W.1 also contacted P.W.24 in the same night. That apart the deceased while chasing the Tractor, in which A1 to A3 were travelled, also called P.W.21-Grade II Constable in the land line of Vijayanarayanam police station at about 10.50 p.m. on the same day i.e., on 06.05.2008 and informed P.W.21 that he was chasing the Tractor bearing Registration No.TN-72A-1661 and enquired whether P.W.1 and others departed from the police station. The evidence of P.W.21 and P.W.24 proves the fact that what they heard from the deceased while he was chasing A1 to A3. Therefore, their evidence become a fact and a direct evidence. Therefore, what was heard by P.W.21 and P.W.24 from the the deceased is certainly a fact. It is the categorical evidence of P.W.21 and P.W.24 that the deceased has informed that he was chasing the Tractor in which A1 to A3 were travelling, carrying the stolen river sand. Such statement heard by P.W.21 and P.W.24 is certainly admissible and relevant not only under Section 6 of the Indian Evidence Act, 1872 but it is also relevant under sub- clause (1) of Section 32 of the Indian Evidence Act, 1872. It is relevant under sub-clause to refer to sub-clause (1) of Section 32 of the Indian Evidence Act, 1872 and the same is extracted hereunder:

"32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc ., is relevant.

(1) when it relates to cause of death. -When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question."

On a perusal of the above provision, it is clear that the above provision deals with two categories of statements. Such statements are admissible in evidence and also can be treated as substantive piece of evidence. The first part of sub-clause (1) of Section 32 of Indian Evidence Act, 1872 relates to statement of the deceased as



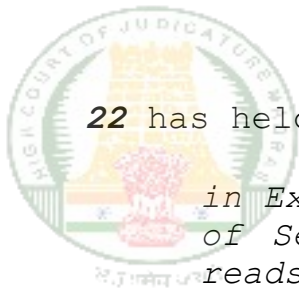
to the cause of death. There will be no difficulty in relying such a statement as substantive piece of evidence, if the statement directly relates to the cause of death. Similarly, the second part relates to the statement as to any of the circumstances of the transaction, which resulted in his death is also admissible and treated as substantive evidence. The second category of the statement referred to in sub-clause (1) of Section 32 of the Indian Evidence Act, 1872 has a very wide dimension. Any circumstances which has a nexus with his death, proximate or distant, direct or indirect, can also fall within the ambit of sub-clause (1) of Section 32 of Indian Evidence Act, 1872 and it can be used as an evidence. In this regard, it is useful to refer to the judgment of Hon'ble Supreme Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra** reported in **AIR 1984 SC 1622**, wherein the Hon'ble Apex Court has held as follows:

"(1) Section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies. whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of S.32 to avoid injustice.

(2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a straitjacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statements may be admissible under S.32."

9. Following the above judgment, the Hon'ble Apex Court in **Patel Hiralal Joitaram Vs. State of Gujarat** reported in **2002 (1) SCC**

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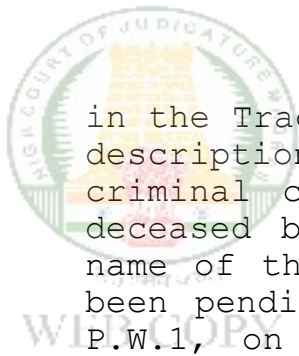
22 has held as follows:

"28. We have therefore to see whether the statement in Ext.67 (extracted above) would fall within the purview of Section 32(1) of the Evidence Act. That sub-section reads thus:

"(1) When it relates to cause of death.- When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statement are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question."

29. The above provision relates to the statement made by a person before his death. Two categories of statement are made admissible in evidence and further made them as substantive evidence. They are: (1) His statement as to the cause of his death; (2) His statement as to any of the circumstances of the transaction which resulted in his death. The second category can envelope a far wider amplitude than the first category. The words "statement as any of the circumstances" are by themselves capable of expanding the width and contours of the scope of admissibility. When the word "circumstances" is linked to "transaction which resulted in his death" the sub-section casts the net in a very wide dimension. Anything which has a nexus with his death, proximate or distant, direct or indirect, can also fall within the purview of the sub-section. As the possibility of getting the maker of the statement in flesh and blood has been closed once and for all the endeavour should be how to include the statement of a dead person within the sweep of the sub-section and not how to exclude it therefrom. Admissibility is the first step and once it is admitted the court has to consider how far it is reliable. Once that test of reliability is found positive the court has to consider the utility of that statement in the particular case."

10. In the light of the above position of law, it has to be seen what are all the circumstances of the transactions which resulted in his death. P.W.24 and P.W.21 heard what was said by the deceased while chasing the accused A1 to A3 in his motorcycle. Similarly, P.W.24 immediately conveyed the same to P.W.1. Therefore, their evidence is certainly admissible in evidence. P.W.24, in her evidence, has clearly stated that the deceased has in fact named three of the accused viz., A1 to A3, who were travelling



in the Tractor bearing Registration No.TN-72A 1661 with the specific description. Her evidence also clearly indicates that several criminal cases also pending against the accused. Therefore, the deceased being the Special Branch Police Constable disclosing the name of the accused, against whom several criminal cases have also been pending, is quite natural. It is also relevant to note that P.W.1, on instructions from P.W.24, immediately went towards the direction in which the deceased has proceeded. After searching the deceased for some time, P.W.1 also went to the village, where A1 to A3 were residing. However, they were not present in their village, which has also been spoken to by P.W.24. The absence of A1 to A3 in the village has also become relevant under Section 8 of the Indian Evidence Act, 1872 as against A1 to A3. It is also relevant to note that early morning at about 5.30 p.m., P.W.1 found the dead body of the deceased and found a Tractor bearing Registration No.TN 72 A 1661 and the Trailer without number plate in the place of occurrence apart from the other material objects. He has clearly stated that one of the wheels of the Trailer was broken. This is also noted not only by P.W.1 but also by the Investigating Officer. Finding the dead body and Tractor and Trailer with some damages in the wheel is also relevant under Section 7 of the Indian Evidence Act, 1872 and is admissible as evidence. The Motor Vehicle Inspector, in his evidence, has stated that one of the tyre in the trailer at the time of inspection is not in order. P.W.4 has purchased the Tractor from P.W.5 and has rented it to A1 at the relevant point of time. P.W.5 has also supported the version of P.W.4 about the sale of tractor to P.W.4. It is clearly established that though the tractor was not legally registered in the name of P.W.4, it was in possession and control of A1 at the relevant point of time.

11. From these evidence, particularly the statement of the deceased that the circumstances narrated by him and the manner in which he was chasing A1 to A3 and thereafter he died, such statement certainly will fall within the ambit of clause (1) of Section 32 of Indian Evidence Act, 1872, as per the judgment of Apex Court referred to above and also the celebrated judgment of the Privy Council in ***Pakala Narayana Swami Vs. Emperor*** reported in ***AIR 1939 PC 47***, wherein the Privy Council in paragraphs 4 to 6 has held as follows:

"4. The first question with which their Lordships propose to deal is whether the statement of the widow, that on March 20 the deceased had told her that he was going to Berhampur as the accused's wife had written and told him to go and receive payment of his dues, was admissible under Section 32(1) of the Indian Evidence Act, 1872. That section provides :

"Statements, written or verbal, of relevant facts made by a person who is dead... are themselves relevant facts in the following cases :



(1) when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question."

Such statements are relevant whether the person who made them was or was not at the time when they were made under expectation of death and whatever may be the nature of the proceeding in which the cause of his death comes into question."

5. A variety of questions has been mooted in the Indian Courts as to the effect of this section. It has been suggested that the statement must be made after the transaction has taken place, that the person making it must be at any rate near death, and that the "circumstances" can only include the acts done when and where the death was caused. Their Lordships are of opinion that the natural meaning of the words used does not convey any of these limitations. The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed. The circumstances must be circumstances of the transaction : general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible. But statements made by the deceased that he was proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular person, or that he had been invited by such person to meet him would each of them be circumstances of the transaction, and would be so whether the person was unknown, or was not the person accused. Such a statement might indeed be exculpatory of the person accused. "Circumstances of the transaction" is a phrase, no doubt, that conveys some limitations. It is not as broad as the analogous use in "circumstantial evidence" which includes evidence of all relevant facts. It is on the other hand narrower than "res gest". Circumstances must have some proximate relation to the actual occurrence : though as for instance in a case of prolonged poisoning they may be related to dates at a considerable distance from the date of the actual fatal dose.

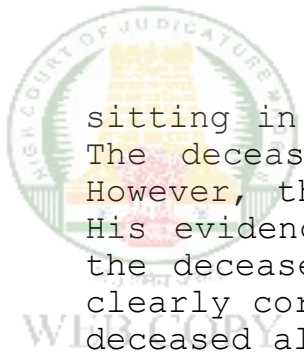
6. It will be observed that "the circumstances" are of the transaction which resulted in the death of the declarant. It is not necessary that there should be a known transaction other than that the death of the declarant has ultimately been caused, for the condition



for the admissibility of the evidence is that "the cause of [the declarant's death comes into question". In the present case the cause of the deceased's death comes into question. The transaction is one in which the deceased was murdered on March 21, or March 22, and his body was found in a trunk proved to be bought on behalf of the accused. The statement made by the deceased on March 20 or 21 that he was setting out to the place where the accused lived, and to meet a person, the wife of the accused, who lived in the accused's house, appears clearly to be a statement as to some of the circumstances of the transaction which resulted in his death. The statement was rightly admitted."

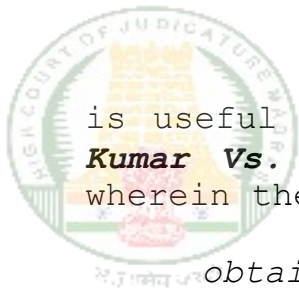
12. In the above case, the Privy Council has held that the statement of the deceased on March 20 or 21 that he was setting out to the place where the accused lived and to meet a person, such statement appears to be a statement as to some of the circumstances of the transaction which resulted in his death. Considering the above well settled position of law, here also the accused A1 to A3 were chased by the deceased, the same was intimated to P.W.24, P.W.21 and P.W.1 and in the next day early morning, the dead body was found in the field of P.W.7 and the material objects were also seized by P.W.1 in the place of occurrence where the dead body was found. Therefore, the circumstances narrated by the deceased will be certainly admissible under clause (1) Section 32 of the Indian Evidence Act, 1872. Though the dead body was found in the early morning, the chasing was done between 10.30 p.m. to 11.00 p.m. and therefore, such circumstances of chasing has a definite nexus with the death of the deceased. Whether such death is a proximate or distant, direct or indirect, can also fall within the ambit of clause (1) of Section 32 of Indian Evidence Act, 1872 as held by the Hon'ble Apex Court in ***Sharad Birdhichand Sarda case (cited supra)***.

13. Considering the above aspect, the statement of the deceased is certainly admissible and can be relied upon by the Court as substantive piece of evidence. Though the prosecution has also relied upon the evidence of P.W.2 as so called eyewitness, we are afraid that it will not be proper for us to believe the version of P.W.2 for the simple reason that P.W.2's conduct is against the normal human conduct. In his evidence, he has stated that he went to the maize field at 10.00 p.m., to assess the value of the maize and witnessed the occurrence of causing death of the deceased by the accused. However, he did not inform the same to any one and he informed the same to the police only after 36 days, despite the fact that he has participated in the agitation in the next morning. Therefore, it is unsafe to rely upon his evidence. However, P.W.12, one of the eyewitnesses, has stated in his evidence that while he was coming at about 10.00 p.m., a tractor which was driven by A1 crossed him and two other persons were there. One person was



sitting in the Tractor and another one was sitting in the trailer. The deceased followed the Tractor shouting to stop the tractor. However, the tractor took a diversion and went to the maize field. His evidence clearly shows that the Tractor was driven by A1 and the deceased followed the Tractor in his bike. This evidence also clearly corroborates the evidence of P.W.24 and the statement of the deceased also.

14. Further, though the prosecution has relied upon the evidence of P.W.13, he has recorded only the extra judicial confession of A2. According to him, A2 and A3 appeared before him on 10.05.2018 at about 8.00 p.m. in his office and confessed the crime. A2 given extra judicial confession which was reduced into writing and the same was marked as Ex.P.9. Thereafter, he handed over both of them to the police station where they were arrested and pursuant to the confession recorded from them, material objects were seized from the accused. Though the prosecution has relied upon the extra judicial confession stated to have been recorded by P.W.13 on 10.05.2018, we are unable to give much credence to the extra judicial confession as well as the evidence of P.W.13 in this regard, for the reasons that P.W.24, in her cross examination, has stated that while invoking the preventive detention order under the Tamil Nadu Act 14 of 1982, the news paper's report, which was published in "Dina Thanthi" dated 08.05.2018 was also annexed by P.W.24, in which it was stated that A2 and A3 were arrested by the police. The above news paper report is also filed as Ex.D.4. Therefore, the alleged extra judicial confession stated to have been given on 10.05.2018 cannot be given much importance. Though the Investigating Officer claimed to have seized the Material Objects on 10.05.2018 under Ex.P11, the alleged seizure cannot be given much credence as the material indicates that the accused were already in the custody of the police on 08.05.2018, though it may be an illegal custody. At the same time, it is clear that the seizure of T.Shirt from A2 and dresses from the other accused may have been made by the police much prior to the date as alleged by them. But the fact remains that there was no explanation from the accused as to the recovery of their own dresses which contained blood stain. Therefore, this Court is of the view that the alleged seizure by the prosecution on 10.05.2018 is doubtful. Such seizure must have been done prior to the above date. Therefore, merely because the seizure has been made and the documents or evidences are collected illegally, which are otherwise relevant, such documents cannot be thrown out by the Court of law. It is settled legal proposition that even if a document or evidence is procured by improper or illegal means, there is no bar to its admissibility if it is relevant and its genuineness is proved. If the evidence is admissible, it does not matter how it has been obtained. However, as a matter of caution, the Court in exercise of its discretion may disallow certain evidence in criminal case if the strict rules of admissibility would operate unfortunately against the accused. it



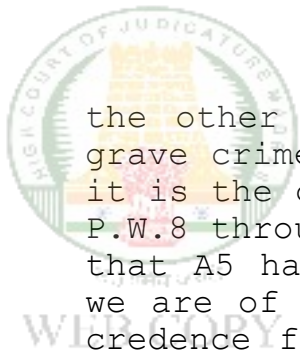
is useful to refer to the judgment of Hon'ble Apex Court in **Umesh Kumar Vs. State of A.P and anr.** reported in (2013) 10 SCC 591, wherein the Hon'ble Apex Court in paragraph 27 has held as follows:

"27.....This court repelled the contention that obtaining evidence illegally by using tape recordings or photographs offend Articles 20(3) and 21 of the Constitution of India as acquiring the evidence by such methods was not the procedure established by law. (Vide: Yusufalli Esmail Nagree v. The State of Maharashtra, AIR 1968 SC 147; Magraj Patodia v. R.K. Birla & Ors., 1970 (2) SCC 888; R.M. Malkani v. State of Maharashtra, AIR 1973 SC 157; Pooran Mal v. Director of Inspection, Income-Tax, New Delhi & Ors., AIR 1974 SC 348; and State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru, (2005) 11 SCC 600)."

15. When there is no explanation from A2 for seizure of T-shirt in 313 Cr.P.C. examination, the forensic report shows that the T-shirt seized from A2 also contained human blood (A group), which is the blood group of the deceased. Similarly, cellphone was seized from A2, which was marked as M.O.25. That apart, wheel spanner was also seized from A2 which also contained human blood (A group). Therefore, the complicity of A2 is also clearly established. Though the presence of A3 was also spoken by the deceased, unfortunately the trial Court has acquitted A3. However, no appeal has been filed by the State as against the acquittal of A3. But the fact remains that the statement of the deceased as narrated above clearly proved the complicity of A1 to A3 and the presence of A3 is convincingly proved not only by the deceased's statement but the evidence of P.W.12 also.

16. That apart, P.W.18 also went to the place of occurrence and collected finger prints from the tractor and also the wheel spanner and examined with the sample finger print of the accused and gave a report. According to him, the finger print collected from the Tractor tallied with the finger print of A1. This is also one of the circumstances clinchingly established the complicity of A1. The above circumstances, clearly established the complicity of A1 and A2. Though none of the witnesses identified A2, but the statement of the deceased narrating the circumstances under which he chased A1 to A3 and the seizure of the material objects which also contain the blood group of the deceased, clearly established the complicity of A1 and A2 in the crime. Hence, at this stage, we have no other option except to hold that the charges against A1 to A2 were clearly established.

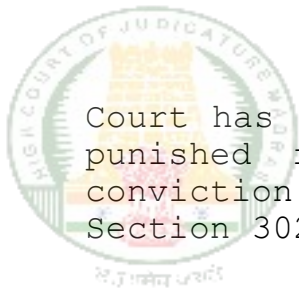
17. Though it is the case of the prosecution that A6's driving license was found in the place of occurrence, we are of the view that merely on the basis of the copy of the license being found in the place of occurrence, without any other strong material against



the other accused, the conviction recorded by the trial Court for grave crime as against A6 is not proper. As far as A5 is concerned, it is the case of the prosecution that A5 has confessed the crime to P.W.8 through mobile phone. Though P.W.8 in his evidence has stated that A5 has repeatedly called him, on perusal of the call details, we are of the view that the evidence of P.W.5 cannot be given much credence for the simple reason that in fact the call details show that P.W.8 has called A5 many times. Therefore, the alleged confession given by A5 through the cellphone is also highly unbelievable. As we disbelieve the evidence of P.W.2 as eyewitnesses, the presence of other accused in the place of occurrence cannot be inferred merely on the basis of alleged seizure of the Driving License of A6.

18. There are no other evidences to show that the other three accused viz., A4 to A6 were present at the relevant point of time in the Tractor. The other circumstances relied upon by the prosecution is the call details of the accused, at the relevant point of time, which was marked as Ex.P.75 to Ex.P.77. The same indicates that on the date of alleged occurrence, there were some calls exchanged between the accused, that by itself cannot be a ground to presume that the other accused were also present in the place of occurrence. Further, after the dead body was found, the complaint has been lodged immediately and the same was reached to the Court on the same day itself. Though there was some delay in despatching the FIR to the Court, P.W.20 in his evidence, has given explanation that on the date of handing over the FIR i.e., on 07.05.2018, the Judicial Magistrate, Nanguneri has been transferred and a new Magistrate has taken charge and thereafter, at 3.30 p.m., the FIR has been handed over to the new Judicial Magistrate, Nanguneri. The fact that the Judicial Magistrate transferred on the particular day is not disputed by the accused. Therefore, in such a scenario, despatching delay cannot be given much importance. As the deceased's statement is also not implicated the other accused and no other materials available on record except the alleged recovery of material objects, as we have disbelieved the evidence of P.W.8, we are of the view that the evidence adduced by the prosecution, as far as the other accused is concerned, is not sufficient to base the conviction for a grave crime. Therefore, the conviction and sentence imposed on the accused A4 to A6 has to be set aside. Accordingly, A4 to A6 are acquitted from all the charges.

19. As far as A1 and A2 are concerned, since this Court has come to the conclusion that except A1 and A2, the involvement of the other accused has not been established, the charge under Sections 147 and 148 IPC has not been made out against the accused. Accordingly, the conviction and sentence imposed on A1 And A2 for the offence under Section 148 IPC has to be set aside. Accordingly, A1 and A2 are acquitted for the offence under Section 148 IPC. However, taking into consideration the nature of the evidence, this



Court has come to the conclusion that A1 and A2 certainly are to be punished for the offence under Section 302 IPC. Hence, the conviction and sentence imposed on A1 and A2 for the offence under Section 302 IPC is confirmed.

20. In the result, Crl.A.(MD)Nos.87 and 360 of 2019 are partly allowed in the following terms:-

The conviction and sentence imposed by the Trial Court on A1 and A2 under Section 148 of the Indian Penal Code is set aside and the conviction and sentence imposed by the trial Court for the offence under Section 302 IPC is confirmed.

21. Crl.A.(MD)No.88 of 2019 is allowed and the conviction and sentence imposed on the appellants/A4 to A6, by Judgment dated 19.02.2019, made in S.C.No.467 of 2018 on the file of IV Additional District and Sessions Judge, Tirunelveli, are set aside and the appellants/A4 to A6 are acquitted from all the charges. Fine amount, if any, paid by the appellants in Crl.A.(MD)No.88 of 2019 shall be refunded to them. Bail bond, if any, executed by them and the sureties shall stand terminated.

Sd/-

Assistant Registrar(CO)

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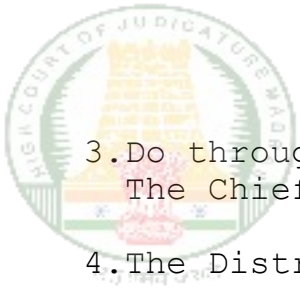
Sub Assistant Registrar(CS)

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 IV Additional Sessions Judge,
IV Additional Sessions Court,
Tirunelveli.
- 2.The Judicial Magistrate, Nanguneri.



3.Do through
The Chief Judicial Magistrate, Tirunelveli District.

4.The District Collector, Tirunelveli.

5.The Director General of Police,
Mylapore, Chennai.

6.The Superintendent, Central Prison, Palayamkottai.

7.The Inspector of Police, Nanguneri Police Station.

7.The Inspector of Police,
Vijayanarayanam Police Station,
Tirunelveli District.

8.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)

Judgment in
Crl.A. (MD)Nos.87, 88 & 360 of 2019
06.04.2022

ck(CO)
TR(22.04.2022) 19P 11C