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CRL.A.NO.653 OF 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 14 / 06 / 2023

JUDGMENT PRONOUNCED ON: 28 / 06 / 2023

CORAM:

**THE HON'BLE MR.JUSTICE M.SUNDAR
AND
THE HON'BLE MR.JUSTICE R.SAKTHIVEL**

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Santhosh Pandaragiri

... Appellant

Versus

The State Represented by
The Inspector of Police
T-12 Poonamallee Police Station
Tiruvallur District.
(Crime No.385/2018)

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to set aside the order of conviction passed by the learned Judge in S.C.No.117 of 2018 dated 07.08.2019 passed by the Principal Sessions Judge, Tiruvallur.



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For Appellant : Mr.R.Baskar
For Respondent : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by Mr.M.Sylvester John

JUDGMENT

R.SAKTHIVEL, J.

This Criminal Appeal is preferred by the sole accused in S.C.No.117 of 2018 on the file of Principal Sessions Judge, Tiruvallur, assailing the judgment awarded by the trial court on 07.08.2019 in which he was convicted for the offence under Section 302 of the Indian Penal Code (45 of 1860) [hereinafter referred to as “IPC” for the sake of brevity] and sentenced to undergo Imprisonment for Life with a fine of Rs.1000/-, in default, to undergo Simple Imprisonment for another six months.

2. The case of the prosecution in brief is as follows:

2.1. PW1 -Muniyappan was working as a Security in the Exide Battery company situated inside the premises of TVS Logistics,



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Senneerkuppam. On 24.03.2018, when PW1 was on night duty, the deceased and the accused came to the Exide Battery company in an Ashok Leyland lorry loaded with Exide batteries bearing Registration No.KA 39 7690. The appellant/accused (Santhosh Pandaragiri) is the Cleaner and the deceased (Ravidra Natekar) is the Driver. Since there was a delay in unloading, they parked the lorry opposite to the said company and slept inside the lorry. Then, on 25.03.2018 at 3.00 am, because of mosquito bites, both came to the company veranda and laid down on the cardboards used for packing. At that time, there occurred a quarrel between them. Thereafter, at 03.30 am, when the deceased was lying down with himself tucked inside a blanket, the accused attacked the deceased on head using a wooden log used for packing and the deceased succumbed to death. Then the accused set ablaze the blanket covering the deceased causing burns on the deceased's face and chest. Hence the offence.

2.2. P.W.1 on witnessing the said occurrence, filed a complaint before the Inspector of Police, Poonamallee Police Station. The Inspector of Police, after investigation, laid a charge sheet against the appellant under



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Sections 302 and 201 of IPC. After perusing the entire materials, the learned Sessions Judge framed charge under Section 302 of IPC against the appellant.

2.3. With a view to prove the case, prosecution has examined 16 witnesses as P.W.1 to P.W.16 and marked 14 documents as Exs.P1 to P14 and 10 material objects as M.O.1 to M.O.10.

2.4. After hearing both sides, the learned Sessions Judge came to the conclusion that the prosecution has proved the charges levelled against the appellant under Section 302 of IPC beyond reasonable doubt and awarded judgment as stated supra.

2.5. Feeling aggrieved with the judgment, the accused has filed this Criminal Appeal under Section 374(2) of Code of Criminal Procedure.

3. The point that arises for consideration in this appeal is as follows:



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(i) Whether the prosecution has proved the charge under Section 302 of IPC against the appellant/accused beyond reasonable doubt?

(ii) Whether the conviction and sentence imposed by the Trial Court on the appellant / accused is to be interfered by this Court?

Discussion and decision for Point Nos.(i) and (ii)

4. The learned counsel for the appellant / accused submitted that the Trial Court has not properly appreciated the evidence; has not considered the contradictory evidence of the witnesses; that has not considered the fact that no identification parade was conducted in this case. Further, the learned counsel submitted that the Trial Court has miserably failed to consider the fact that P.W.4 and P.W.5 could not have seen the alleged occurrence. He further submitted that there is a delay in sending the First Information Report, statement of the witnesses allegedly recorded under Section 161(3) of Code of



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Criminal Procedure, 1973 [hereinafterwards referred to as Cr.P.C for the sake of brevity] observation mahazar, rough sketch, inquest report etc. The learned counsel further submitted that the Trial Court has not considered the fact that the appellant / accused does not know Tamil language. The examinations under Section 313(b) of Cr.P.C., was not conducted in a proper manner and thereby, violated the principles of fair trial. He further submitted that there are huge contradictions in the evidence of prosecution witnesses. The appellant / accused did not commit the offence as alleged. The appellant / accused has been falsely implicated in this case. Accordingly, he prayed to set aside the conviction and sentence imposed by the learned Trial Judge.

5. Per contra, learned Additional Public Prosecutor argued that the appellant / accused and the deceased are hailing from one and the same place, and they were engaged as driver and cleaner for a Lorry bearing Registration No.KA 39 7690. The appellant / accused and the deceased were last seen together by P.W.1 at the place of occurrence and the occurrence was witnessed by P.W.1, P.W.4 and P.W.5. There is no contradictions in the prosecution witnesses. P.W.1, P.W.4 and P.W.5 are the eye witnesses. There is



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no reason to reject the eye witness testimony. He further submitted that the prosecution has proved its case by way of medical evidence and Forensic evidence. The Trial Court after considering all the evidence, came to the conclusion that the appellant / accused committed the offence under Section 302 of IPC. There is no warrant to interfere in the judgment. Accordingly, he prayed to dismiss the Appeal.

6. Heard the submissions made on either side and perused the entire evidence available on record.

7. P.W.1- Muniyappan was the Security Guard working in Exide Batteries Company. He deposed in his Chief examination that on 24.03.2018 at 10.00 pm, he went to his duty. His duty was *inter alia* to record the inward movement of vehicles and the time of unloading. On 25.03.2018 at 03.30 a.m., the driver and the cleaner of the Lorry bearing Registration No.KA 39 7690 came to him and sought permission to sleep on the 'stage' due to mosquito bites. P.W.1 permitted the same. At that time, there developed a quarrel between the appellant and the deceased. P.W.1 warned them to stay



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silent. After which, the deceased spread out a carboards and a blanket over it and went to sleep while the appellant / cleaner was roaming hither and thither.

Thereafter, the appellant / accused attacked the deceased using a wooden log twice. When P.W.1 tried to prevent the same, the appellant had tried to attack P.W.1. Then, P.W.1 went out to call others. By the time P.W.1 returned with 2 others, they saw that the blanket upon which the deceased was lying was set ablaze and that the appellant had escaped through backside of the godown. P.W.1 and others extinguished the fire using water and informed the Poonamallee Police Station and gave a complaint to the Poonamallee Police Station.

7.1. P.W.1 in his cross examination has deposed that he stopped going to work after the day of occurrence. He admitted the factum of maintenance of the inward and outward movements of vehicles register and the visitors register. He deposed that 5-6 vehicles would have entered that day and admitted that the appellant and the deceased do not know Tamil or English and they were conversant only with Hindi and stated that the deceased and the appellant sought water from P.W.1 using sign language. He



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further deposed that he gave a written complaint between 08.30 and 09.30 am on 25.03.2018 only after identifying the accused to the police at the Petrol Bunk. However, P.W.16 – S.Vijaya Kumar, Investigating Officer who registered the FIR has deposed that P.W.1 lodged Ex.P1 complaint at 04.30 p.m. on 25.03.2018 in person at the police station and that he registered the FIR (Ex.P10) in Crime No.385/2018 under Sections 302 and 201 IPC and started investigation at 05.30 am., then visited the scene of occurrence, prepared the rough sketch and observation mahazar and recovered the Material Objects M.O.1 to M.O.5 in the presence of the witnesses Dhanasekar (P.W.2) and one Gopi.

8. P.W.2 – Dhanasekar who is working as a Security at the Exide Company Godown is cited as observation mahazar witness. He deposed that on 25.03.2018 he came to office at 06.00 am. to attend his duty. At that time, police were crowded at the scene of occurrence and recovered the Material Objects (M.O.1 to M.O.5) from the place of occurrence at about 06.15 am as follows:



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M.O.1 – Blood stained 2 ¾ feet packing wooden log

M.O.2 – Blood stained partly burnt Kambali Bed Sheet

M.O.3 – Blood stained dark brown colour packing sheet

M.O.4 – Blood stained cement floor piece

M.O.5 – Unstained cement floor piece

8.1. P.W.2 identified the M.O.1 in the Court.

9. On the side of the prosecution, Sugumar and Elumalai who were said to be the eyewitnesses were examined as P.W.4 and P.W.5 respectively. P.W.4 – Elumalai deposed that he was working as Supervisor in LCC Company, which is situated inside the premises of TVS Logistics. He further deposed that when he was on duty on 25.03.2018 at 03.00 a.m., P.W.1 came to his company and told that Cleaner attacked Driver using a wooden log. He further deposed that himself and his friend Elumalai (P.W.5) went to the Exide Batteries godown. By the time they reached, the Driver was dead and the Cleaner was setting the blanket ablaze in which the deceased was covering himself. The accused fled away from the scene of occurrence on seeing them. P.W.4 identified the accused before the Court.



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10. P.W.4 in his cross examination has stated that after the accused fled away, he returned to his company. He further deposed that police arrived at the scene of occurrence at 03.30 a.m., and that he does not know anything that happened afterwards. He further stated that he could not remember the colour of the dress worn by the accused while fleeing away.

11. P.W.5 – Elumalai works in the same company as P.W.4. He deposed in his chief examination along the same line of P.W.4. P.W.5 in his cross examination has stated that he did not see the accused after the incident.

12. Prosecution has examined one T.Jerinia Livingston (P.W.3) and Arul Arokiasamy (P.W.15) as confession witnesses. P.W.3 is working as a Serviceman in Exide Batteries. He deposed that on 25.03.2018 at about 08.45 am., he observed that police was crowded at the Petrol Bunk and that Arul Arokiasamy, who is a known person to him was also there. At that time, the Inspector of Police arrested the appellant / accused and enquired him and the appellant / accused was speaking in Hindi and Arul Arokiasamy was translating the same. He further deposed that the appellant / accused handed



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over one T.Shirt and one vest (Banian) to the Inspector of Police from the vicinity of the Petrol Bunk. It is to be noted that P.W.3 was examined on 19.11.2018.

13. P.W.15 deposed that he is working as a Manager in 'Protect Security Office' at Chennai, that on 25.03.2018, P.W.1 – Muniyappan was on duty in Exide Battery Company, that P.W.1 informed him a cleaner attacked the driver using a wooden log that at 03.00 am he went to the occurrence place that the police and Muniyappan arrested the appellant / accused near the Petrol Bunk, that the appellant / accused gave statement in Hindi, that he translated the same and that the police recorded the said statement.

13.1. In his cross examination, he deposed that he does not know the accused before the incident and that only at the Police Station, police collected the T-shirt, Banian from the accused. Further, he deposed that the Inspector of Police himself recorded the confession statement in a hand written manner at the Petrol Bunk itself.



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14. P.W.16 – Thiru. Vijayakumar is the Investigation Officer in the case. He deposed that on 25.03.2018 at 04.30 am, while he was on duty, Muniyappan son of Tamilarasu (P.W.1) came to police station and gave a complaint (Ex.P1), based on which he registered a case in Crime No.385/2018 under Sections 302 and 201 IPC and took the case for investigation and proceeded to the scene of occurrence at 05.30 am, prepared a observation mahazar(Ex.P2) and rough sketch (Ex.P11) in the presence of the witness Dhanasekar (P.W.2) and Gobi and recovered packing wooden log, blood stained brown colour packing cardboard, portion of blood stained cement floor, portion of ordinary cement floor, driving license of the deceased in the seizure mahazar (Ex.P3). The material objects were marked as M.O.1 to M.O.5. He further deposed that at 08.00 a.m. he arrested the appellant / accused opposite to the Senneerkuppam Petrol Bunk. At that time, the appellant / accused voluntarily gave confession statement and he recorded the same with the help of a translator Arul Arokiasamy (P.W.15). He further deposed that the accused identified the M.O.1 and handed over a T-shirt and a blood stained banian from the vicinity of the Petrol Bunk. The seizure mahazar is marked as Ex.P4 and the T-shirt and blood stained banian are



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marked as M.O.6 and M.O.7 respectively. Thereafter, he sent the appellant /
accused to judicial custody.

14.1. He further deposed that on the same day at 03.30 pm., he visited the Kilpauk Medical College Hospital where the dead body of the deceased was kept and conducted inquest on the dead body in the presence of Panchayatdars. The inquest report is marked as Ex.P12.

14.2. Thereafter, P.W.16 in his cross examination deposed that he did not recover and file the attendance register and inward and outward movements of vehicles registers of the Exide Battery company. Further, he admitted that he instructed the Grade – I Head Constable Lakshmanan over phone about the incident and directed him to take the dead body of the deceased to Kilpauk Medical College and Hospital. He further deposed that P.W.1 gave a written complaint at 04.30 am on 25.03.2018 and he inspected the scene of occurrence between 05.30 and 06.30 am on the same day. Further, he admitted that he recorded the confession statement of the accused in a typed manner by using computer. Further, he admitted that he did not



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enquire the post-mortem Doctor about the time of death of the deceased and that he did not enquire about the previous enmity between the deceased and the accused.

15. It is apposite to mention that Grade – I Head Constable Lakshmanan was examined as P.W.9. He deposed that as per the instructions given by P.W.16 he took the body of the deceased to Kilpauk Medical College and Hospital and kept it in the Mortuary between 04.30 and 05.00 am on 25.03.2018.

16. P.W.11 is the Doctor who conducted the postmortem of the deceased and the postmortem report reads as under:

“1.Reddish dermo epidermal burns seen over the face, font, sides and back of neck, front and sides of chest and upper abdomen, front of both upper limbs with partial singeing of scalp hair; moustache and beard. The margins are reddish with few blisters surrounding it, sparing all the other areas.



2. Laceration wound of 5 cm x 3 cm x bone deep over the left side of the forehead.

3. Lacerated wound of 2 cm x 1 cm x bone deep, over the left parietal region.

4. Lacerated wound of 5 cm x 1.5 cm x bone deep over the right parietal region.

5. Abrasion wound of 10 cm x 3 cm over the upper 1/3 of left side of chest.

6. Dark discoloration seen over the upper 1/3 of right side of chest. O/d – dark red contusion wound 8 cm x 4 cm seen over the upper 1/3 of right side of chest.

7. Scalp – diffuse contusion seen over the fronto – parieto – temporal region.

8. Vault – comminuted fracture involving the entire left and right fronto – parieto – temporal region exposing the brain matter.

9. Base of skull – Comminuted fracture of the entire anterior cranial fossa and left side of middle cranial fossa.

10. Dura – torn irregularly.

On dissection of Head:

Scalp, Cranial Vault, Meninges: Vide injuries.



Brain: Normal in size. Diffuse Subdural hemorrhage with sub arachnoid hemorrhage seen over the right and left fronto – parieto – temporal region. C/s: NAD. Ventricles: Contains few ml of straw coloured fluid. Base of Skull: Vide injuries.

On dissection of Thorax;

Ribs : Intact

Larynx : Nil particular. Trachea: Contains blood stained frothy fluid.

Hyoid: Intact

Heart: Pericardial sac contains 40 ml of pericardial fluid.

Normal in size. C/s: Chambers : Contain clotted blood.

Coronaries : patent. Valves: Patent. Great Vessels : Nil particular.

Lungs: Normal in size. C/s: Normal

On Dissection of Abdomen:

Stomach : Contains 250 gms of partly digested greenish yellow color food particles. No specific smell smelt.

Mucosa: Normal.

Intestines: Distended with gas. Mucosa: Normal.

Liver: Normal in size, C/s: Pale, Spleen: Normal in size,



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C/s: Normal.

Kidneys: Normal in size, C/s.Pale, Bladder: Contains 150 ml of urine.

Genitalia : Normal

Pelvis / Spinal Column : Intact.

Cause of death as the deceased would appear to have died of shock and heamorrhage due to multiple injuries."

16.1. The Doctor (P.W.16) has not stated about the time of death of the deceased in his deposition as well as the postmortem report. As per medical evidence, there were no external injuries in the hands and the legs but there were injuries on the left side forehead. P.W.16 deposed that there is no possibility for the injuries of the deceased to have happened due to a fall from the lorry. As per the postmortem report, the deceased died due to shock and heamorrhage due to multiple injuries.

17. P.W.12 is a Scientific Officer attached to Forensic Science Laboratory, Chennai. He deposed that except M.O.5, blood stain was found on all the other material objects collected from the scene of occurrence. His report has been marked as Ex.P6.



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18. P.W.13 is the Chemical Examiner attached to Forensic Science Laboratory, Chennai. He deposed that there is no alcohol or poisonous substances found in the internal organs of the deceased. His report is marked as Ex.P7.

19. P.W.14 is the Serologist attached to Forensic Science Laboratory, Chennai. She deposed that the blood group of the deceased is 'Group A' and that the blood samples collected from item nos.6 to 8 belong to Blood Group A. It is to be noted that item No.6 is full sleeve T-shirt and item No.7 is sleeveless vest (banian), said to be recovered from the appellant/accused. Her reports are marked as Exs.P8 and P9.

20. P.W.15 is one Arul Arockiasamy. The prosecution examined P.W.15 as a confession witness. He deposed that on 25.03.2018 at about 03.00 am, the police arrested the appellant / accused and obtained confession in Hindi and that he translated the said confession to the Inspector of Police. He further deposed that he does not know the appellant / accused before the incident, that P.W.1 informed him that the appellant / accused killed the



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deceased and that the Police recovered T-Shirt and Vest (banian) at the police station from the appellant / accused.

21. This Court has considered the submission on either side.

Eye witnesses' testimony

22. According to the prosecution, the alleged offence happened on 25.03.2018 at 03.30 a.m., within the premises of Exide Battery company. P.W.1 has deposed that on 24.03.2018 at night hours, five to six Lorries were stationed inside the company premises for unloading the Batteries. He further deposed that he cannot state the other vehicles' Registration numbers or details except the one involved in this case. He admitted that the appellant and the deceased does not know Tamil language. He deposed that he gave a written complaint (Ex.P1) before the police station on 25.03.2018 between 08.30 and 09.30 am. But the Investigation Officer (P.W.16) in his evidence has stated that he received the complaint at 04.30 am and went to the scene of occurrence on 25.03.2018 between 05.00 and 05.30 am. This contradictory evidence creates doubt in the testimony of the P.W.1.



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23. Further, P.W.9 has deposed that, as per the direction of the Investigating Officer, he brought the dead body of the deceased to Kilpauk Medical College and Hospital and kept it in the Mortuary between 04.30 and 05.30 am on 25.03.2018. The Investigation Officer (P.W.16) in his evidence has deposed that P.W.1 appeared before the police station and gave Ex.P1 complaint at 04.30 am on 25.03.2018 and that after registering the First Information Report (Ex.P10), he rushed to the place of occurrence at 05.30 am and started his investigation. The above contradictions create doubt in the prosecution case.

24. Moreover, the Doctor who conducted the postmortem of the deceased has not stated the time of death. This also adds to the doubts in the prosecution case. Further, P.W.1, P.W.2, P.W.3, P.W.4, P.W.5 and P.W.15 are all one way or other related to Exide Battery company where the alleged offence took place. In short, they are interested witnesses. According to P.W.1, in the place of occurrence, five to six lorries were stationed. Hence naturally, drivers and cleaners of those lorries would have been there. But those persons are not examined by the Investigation Officer and they are not shown as



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prosecution witnesses. These circumstances also create serious doubt in the prosecution case.

25. For the reasons stated above, corroborative evidence is required to believe the testimony of P.W.1. Prosecution had examined P.W.4 and P.W.5 to support the evidence of P.W.1. As per the deposition of P.W.4 and P.W.5, they had no opportunity to observe the physical and facial features of the accused. Admittedly, no identification parade was conducted in this case. Hence, P.W.4 and P.W.5 identifying the accused in Court is not probable and believable. Hence, the evidence of P.W.4 and P.W.5 do not corroborate the testimony of P.W.1. Therefore, the testimony of the alleged eye witnesses does not inspire confidence.

Confession and recovery

26. The prosecution has examined P.W.3 to prove that the accused gave confession, based on which the alleged Material Objects viz., M.O.6 and M.O.7 were recovered from the vicinity of the Petrol Bunk.



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Admittedly, P.W.3 does not know Hindi language. Further, the prosecution has examined P.W.15 who translated the accused to the police, to prove the alleged confession said to have been given by the appellant / accused. P.W.15 has deposed that at about 03.00 am on 25.03.2018 he reached the place of occurrence where he did not find P.W.1. He further deposed that he came away from the place of occurrence and found P.W.1 at the Indian Oil Corporation Petrol Bunk along with the police personnel and then through P.W.1 he came to know that the appellant / accused killed the deceased. He further stated that the Inspector of Police recorded the confession statement of the appellant / accused himself in a handwritten manner. Further, he has stated that the Inspector of Police received a T-shirt and a Vest (Banian) from the appellant / accused at the police station. It is to be noted that evidence of P.W.3 was recorded by the Trial Court on 19.11.2018. But the evidence of P.W.15 was recorded only on 29.04.2019 by the Trial Court. It is also to be noted that the alleged confession statement has been typed using computer and sent to the jurisdictional Magistrate belatedly on 26.03.2018. This court is of opinion that the prosecution has attempted to fill up the lacuna by way of belated examination of P.W.15.



27. It is apposite to mention here that as per Sections 25 and 26 of the Indian Evidence Act, 1872, confession to the police officer is inadmissible in law. But Section 27 of the Indian Evidence Act, 1872, is an exception to the above provisions. Section 27 of the Indian Evidence Act, 1872, requires that information should relate to 'any fact deposed to be discovered' [*vide PULUKURI KOTTAYA VS. EMPEROR (AIR 1947 PC 67)*]. The Investigation Officer should have deposed that he discovered a fact in consequence of the information received from an accused person in police custody to make the evidence admissible under section 27. Thus, there must be a discovery of fact not within the knowledge of police officer as a consequence of information received [*vide STATE (NCT OF DELHI) VS. NAVJOT SANDHU @ AFSAL GURU (2005 (11) SCC 600)*]. The word 'discover' conveys the meaning of coming to know something that is not already known. In other words, if the Investigation Officer has already come to know from other sources where certain objects were hidden, it cannot be said that they were discovered in pursuance of the information of the accused [*vide AHER RAJ VS. STATE (AIR 1956 SC 217)*]. The Investigation Officer in his chief examination has only stated that he recovered M.O.6 and M.O.7



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from the accused. In this case, since the investigation officer has not stated that he recovered M.O.6 and M.O.7 based on the confession said to have been given by the accused, the alleged confession and recovery made by the Investigating Officer is not admissible.

Delay in sending FIR to Jurisdictional Magistrate

28. In this case, according to the prosecution, FIR was registered at 04.30 am on 25.03.2018 but the same was received by the jurisdictional Magistrate at 02.20 pm on 25.03.2018. It is to be noted that the distance between the place of occurrence and the jurisdictional Magistrate Court is approximately 4 kms. The prosecution has not explained the delay in sending the FIR to the Court. Further, the observation mahazar (Ex.P2), rough sketch (Ex.P11) and inquest report (Ex.P12) were received by the Jurisdictional Magistrate only on 02.04.2018. The case property, Form No.91 and 161(3) Cr.P.C., statement of the material witnesses were received by the Court only after 02.04.2018.



29. It is apposite to cite here the decision of this Court in the case of ***In Re: KARUNAKARAN AND OTHERS [1975 (1) MLJ 209]*** in which this court has observed as under:

“5. In some instances we were not able to find out at what precise point of time on a particular day the complaint was made to the police, and the relevant first information report were received by the Sub-Magistrate, for they contained only the initials of the Sub-Magistrate, and the date. The importance of noting the exact time cannot be over-stated or over emphasized. We have also come across instances where we could not be sure whether the inquest report and the statements of witnesses recorded during the inquest accompanying the inquest report had been sent to the Sub-Magistrate on the day when they purported to have been sent, since they did not contain the initials of the Sub-Magistrate with the date of the receipt of the same. In our note dated 28th March, 1974 we had stressed the importance of noting the time at which and the date on which these documents were



received by the Sub-Magistrate, since the guilt of the accused or his innocence could be gauged, measured and determined unmistakably from certain documents received by the Courts in good time and we find that a Circular, R.O.C. No. 2272-A/74-F1 dated 20th June, 1974 was sent to all the Magistrates. In the instant case we had grave doubts whether the inquest report and the statements of witnesses recorded during the inquest and said to have accompanied the inquest report were received by the Sub-Magistrate on a particular day, for the Magistrate had initialed the inquest report, but in the date seal which was affixed to the inquest report the date was written in ink. The statements of the witnesses recorded during the inquest, however, did not contain the initials of the Sub-Magistrate at all. There was a lurking and gnawing suspicion in our minds whether they were smuggled into the Court of the Sub-Magistrate belatedly and far later. We are therefore of the opinion that it is imperative that the following documents should be dispatched immediately, without any delay by the investigating officers to the Sub-Magistrate. The Station



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House Officer should record the time of the actual dispatch of the various documents in the various registers, particularly, the statement recorded under Section 154 of the Code of Criminal Procedure. On receipt of the said documents, the Magistrate should initial the same, noting therein the time and date of the receipt of those documents. This would provide the only judicial safeguard against subsequent fabrication of such documents in grave crimes. Therefore, as the Manual of Instructions for the Guidance of Magistrates in the Madras State does not contain any instructions to the Magistrates in this regard, we suggest that the same may be brought up-to-date by incorporating in it the circulars which had been issued from time to time for the guidance of the Magistrates. The following are documents of special importance which, in our opinion, should be dispatched by the investigating officers without any delay to the Magistrates, and they should bear the initials of the Magistrate with reference to both the time and date of their receipt.

1. The original report or complaint under Section 154 of the Code of Criminal Procedure.



2. *The printed form of the first information report prepared on the basis of the said report or complaint.*

3. *Inquest reports and statements of witnesses recorded during the inquest.*

4 *Memo, sent by the Station House Officers to doctors for treating the injured victims who die in the hospital subsequently and the history of the case-treatment.*

5. *Memo, sent by the doctor to the police when a person with injuries is brought to the hospital, or the death memo, sent by the doctor to the police on the death of the person admitted into the hospital with injuries.*

6. *Observation mahazars for the recovery of material objects, search lists and the statements given by the accused admissible under Section 27 of the Evidence Act, etc. prepared in the course of the investigation.*

7. *The statements of witnesses recorded under Section 161 (3) of the Code of Criminal Procedure.*

8. *Form No. 91 accompanied by material objects."*



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Examination of the accused under Section 313(1)(b) of Cr.P.C.

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30. In this case, this Court has perused the examination of the accused under Section 313 (1)(b) of Cr.P.C. The entire deposition of the each witness was put as one question to the accused. Hence, appellant / accused might not have been able to put forth a rational and intelligible explanation [vide *JAI PRAKASH TIWARI VS STATE OF MADHYA PRADESH 2022 LIVELAW (SC) 658*]. It is apposite to mention that the accused does not know Tamil language. Hence, the Trial Court ought to have taken much care while examining the appellant / accused under Sec 313 of Cr.P.C. Therefore, it can be seen that principles of natural justice have not been duly followed in this case by the Trial Court.

Conclusion

31. In view of the above discussions, this Court is of the view that the prosecution has not proved the case beyond reasonable doubt. Hence, the accused is entitled the benefit of doubt. Hence, this Court is inclined to interfere with the judgment of the Trial Court. The points are answered accordingly in favour of the appellant / accused and against the prosecution.



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32. Resultantly, the Criminal Appeal is allowed and the judgment

dated 07.08.2019 passed in S.C.No.117 of 2018 by the learned Principal Sessions Judge, Tiruvallur is hereby set aside. The appellant / accused is acquitted from the charge under Section 302 IPC and the bail bond if any, executed by him shall stand discharged. The fine amount if any paid by the accused / appellant shall be refunded to the appellant. The appellant / accused shall be released forthwith, if his custody is not required in any other case / cases.

(M.S., J.) (R.S.V., J.)

28 / 06 / 2023

Index : Yes
Speaking
Neutral Citation
TK

To

1.The Principal Sessions Judge, Tiruvallur.

2.The Inspector of Police

T-12 Poonamallee Police Station, Tiruvallur District.

3.The Superintendent

Central Prison, Puzhal, Chennai.

4.The Public Prosecutor, High Court of Madras.

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M.SUNDAR, J.
AND
R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
CRL.A.NO.653 OF 2019

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