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Crl.A.(MD) Nos.89 of 2020 & 313 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	21.11.2023
Pronounced on	07.12.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

Crl.A.(MD) Nos.89 of 2020 & 313 of 2021

Sakthi Venkatesh @ Venkatesh
S/o.Murugesan

... Appellant in
Crl.A.(MD)No.89 of 2020

Anthonyraj
S/o.Jesuraj

... Appellant in
Crl.A.(MD)No.313 of 2021

Vs.

The Inspector of Police,
Koppampatti Police Station,
Thoothukudi District.
(Crime No.36/2017)

... Respondent in both Crl.As.

Common Prayer:- Criminal Appeals filed under Section 374 of the Code of Criminal Procedure, 1973 [Act No.2 of 1974] praying to call for the entire records connected with the proceedings of the Judgment of conviction passed by the II Additional District & Sessions Court, Thoothukudi in S.C.No.295 of 2018 dated 04.09.2019 and set aside the same and acquit the appellants from all charges.



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For Appellant in
Crl.A.(MD)No.89/2020 : Mr.V.Kathirvelu, Senior Counsel
for Mr.M.Prabu

For Appellant in
Crl.A.(MD)No.313/2021: Mr.V.Rajiv Rufus
for Mr.G.Bhagavath Singh

For Respondent in
both Crl.As. : Mr.A.Thiruvadikumar
Additional Public Prosecutor

COMMON JUDGMENT

R.SAKTHIVEL, J.

By this common Judgment, both appeals are being disposed of.

2. The Criminal Appeal in *Crl.A.(MD) No.89 of 2020* is preferred by 'Accused No 1 - Sakthi Venkatesh alias Venkatesh' and the Criminal Appeal in *Crl.A.(MD) No.313 of 2021* is preferred by 'Accused No 2 - Anthonyraj' assailing the 'Judgment dated 04.09.2019' [henceforth referred to as 'impugned Judgment' for the sake of brevity] passed by 'II Additional District and Sessions Court, Thoothukudi' [henceforth referred to as 'Trial Court' for the sake of brevity] in Sessions Case No.295 of 2018 in which both the appellants [henceforth referred to as A1 and A2 as per Trial Court's description for the sake of clarity and convenience] were



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convicted for the offence punishable under Section 302 of 'The Indian Penal Code' 1860 (Act No.45 of 1860) [henceforth referred to as 'IPC' for the sake of brevity] and sentenced as follows:-

Sl. No	Crl.A.(MD) No.	Accused No.	Sentence
1	Crl.A.(MD) No.89/20	Accused No.1	To undergo Imprisonment for Life and also ordered to pay a fine of Rs.1,000/-, in default thereof, to undergo Simple Imprisonment for a further period of 6 months.
2	Crl.A.(MD) No.313/21	Accused No.2	To undergo Imprisonment for Life and also ordered to pay a fine of Rs.1,000/-, in default thereof, to undergo Simple Imprisonment for a further period of 6 months.
Note: The period of imprisonment already undergone was ordered to be set off under Section 428 of Criminal Procedure Code, 1973 (Act No.2 of 1974) [henceforth referred to as 'Cr.P.C.' for the sake of brevity].			

3. The prosecution case, in brief, is as follows:

3.1. The deceased-Raja was living with his Father-Bakiyanathan (P.W.1), Mother-Marianesam (P.W.2), Wife-Muthumari (P.W.3) and two kids as a joint family in 5th Street, Shanmugasigamani Nagar, Kovilpatti. The deceased was earning his living by driving his own autorickshaw and by setting up sound systems. A1-Sakthi Venkatesh alias Venkatesh, A2-



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Anthonyraj, A3-Maarimuthu, A4-Anandaraj alias Thangaraj, A5-Sudalaimani [henceforth collectively referred to as 'accused' for the sake of convenience and clarity] and the deceased are friends.

3.2. The deceased often used to go to the street in Karunanidhi Nagar, Kovilpatti where the accused were residing and verbally abusing the accused. Further, two months before the occurrence, the deceased knocked A2 off bike, picked up a quarrel and verbally abused A2 and his friends, calling himself a big shot of the street and the next “Rocket Raja”. Enraged by all these, at 19.30 hours on 06.06.2017, accused gathered near the flag post in Karunanidhi Nagar where they usually gather, conspired and resolved to end the deceased’s life.

3.3. On 07.06.2017, the deceased came home after work, got some money from his mother (P.W.2), and left the house at 20.30 hours in his Pulsar bike bearing Registration No.'TN 67 AS 9229' (henceforth referred to as Pulsar bike for the sake of brevity). On the aforementioned date, at 23.30 hours, the accused gathered near the flag post in Karunanidhi Nagar where they usually gather and were consuming alcohol in the glow of the street lamp. At that time, the deceased came there in his Pulsar bike. The



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accused, seeing this as a good opportunity to end the deceased's life, got the deceased into a highly inebriated mood by giving him a high amount of alcohol. Then, on being so drunk and inebriated, the deceased passed derogatory remarks about the families of A1 and A2 and it resulted in a quarrel between the accused and the deceased. The quarrel led to the accused assaulting the deceased with their hands. When the deceased attempted to flee, the accused caught hold of the deceased, made him sit in-between A3 and A1 in a Splendor bike bearing Registration No.'TN 67 BB 4609' with A3 in the front riding the bike and A1 in the pillion seat holding the deceased and abducted the deceased to the spot of occurrence ie., Chellappa Moopanar's land near Erachi-Kasavankundru Road. A5 and A2 followed them in TVS XL motorcycle bearing Registration No.'TN 69 AQ 2716' and A4 in the deceased's Pulsar bike.

3.4. Then, with A5 holding a mobile with flashlight on and also vigilantly scanning for anyone approaching, A1 to A4 using a Knife (M.O.5) and Sickle (M.O.7) inflicted multiple cut and stab injuries on the deceased's body and thereby killed the deceased. The accused left the spot after ascertaining the death of the deceased, leaving behind the deceased's body and the pulsar bike and thereby committed the offence.



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3.5. The next day ie., on 08.06.2017, at 08.00 hours, upon seeing people crowded on a Punjai land on the left side of Erachi-Kasavankundru Road while P.W.1 - Father of the deceased was returning from Erachi, he approached to see what was happening and found the body of deceased with many cut injuries and the Pulsar bike. Then, at 09.30 hours on the same day, he preferred Ex.P.1 - Written Complaint at the Koppampatti Police Station. P.W.10 - Sub Inspector of Police received the said complaint at 09.30 hours and registered a case in Crime No:36/2017 under Section 302 of the IPC. Thereafter, she sent the First Information Report (Ex.P.7) [henceforth referred to as 'FIR' for the sake of brevity] and Complaint (Ex.P.1) to Judicial Magistrate No.2, Kovilpatti through Constable Sudalaimuthu, and a copy of the FIR and Ex.P.1 - Complaint to P.W.11 - Investigation Officer at 10.00 hours in person.

3.6. On receiving the complaint, P.W.11 went to the scene of occurrence and prepared Rough Sketch (Ex.P.18) and Observation Mahazar (Ex.P.2) in the presence of the witnesses Valliammal (P.W.5) and Pechimuthu (L.W.10). Then he collected blood-stained Soil (M.O.2), sample Soil without blood stains (M.O.3), a pair of slippers (M.O.4) and



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the Pulsar Bike (M.O.1) from the scene of occurrence. Thereafter, he conducted inquest over the body and prepared inquest report marked as Ex.P.19. Then, he sent the body for postmortem examination. Then he examined all the witnesses and recorded their statements. Then he received the blue Jeans Pants (M.O.12), blood-stained “Munda Baniyan” (M.O.13) and blood-stained Inner-wear (M.O.14), worn by the deceased, after Post-mortem.

3.7. Then on 09.06.2018, he apprehended and arrested A2 and A5 who came in a TVS XL motorcycle bearing Registration No.'TN 69 XU 2716' based on a secret tip, at Kalavipatti Bus-stop in the presence of the witnesses Maarisamy (P.W.6) and Thangamaariappan (L.W.12) and A2 and A5 voluntarily gave a confession, the admissible portion of which was marked as Ex.P.21. Then, A2 handed over a blood-stained Shirt (M.O.6), blood-stained Knife (M.O.5) and the TVS XL (Registration No.TN 69 XU 2716 : not marked) in the presence of the above-said witnesses and sent them to Judicial Magistrate No.2, Kovilpatti under Form 95. Then he altered the Section from 302 of IPC to Sections 147, 148, 342, 363 and 302 of IPC and filed Alteration report. On 10.06.2017, while he was in a vehicle check at Sivandhipatti Bus-stop, he apprehended



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and arrested A1, A3 and A4 who came in a Splendor Bike bearing Registration No.'TN 67 BB 4609' in the presence of witnesses Muthumani (P.W.7) and Balamurugan (L.W.14). Then he recorded the voluntary confession statement given by A1 - Sakthi Venkatesh alias Venkatesh, the admissible portion of which is Ex.P.22. Based on the confession, he recovered Splendor bike bearing Registration No.'TN 67 BB 4609'(M.O. 9), blood-stained Sickle (M.O.7) and blood-stained Shirt (M.O.8).

3.8. Then he recorded the voluntary confession statement given by A3-Maarimuthu, the admissible portion of which is Ex.P.23. Based on the confession, he recovered blood-stained Shirt (M.O.11).

3.9. Then he recorded the voluntary confession statement given by A4-Anandraj, the admissible portion of which is ExP24. Based on the confession, he recovered blood-stained Shirt (M.O.12).

3.10. Then, he sent the seized items to the Judicial Magistrate No.2 under Form 95. Thereafter, on 26.06.2017, he sent a requisition letter to Judicial Magistrate No.2 for sending all the recovered properties in P.R.No.171/17 for forensic analysis. Then, he examined the postmortem



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doctor and FSL Chemical Analyst and collected the Post-mortem Report (Ex.P.15), Chemical Analysis Report (Ex.P.27) and Serology Report (Ex.P.28). Then filed final report before the Judicial Magistrate No.2.

3.11. The Judicial Magistrate No.2 took the case on file as PRC.No 43/2017. After furnishing copies under Section 207 of Cr.P.C. to the accused, he committed the case file to the Principal District and Sessions Court under Section 209(a) of Cr.P.C. on 23.01.2018. The learned Principal District and Sessions Judge, after receiving the case file, assigned Sessions Case No.295 of 2018 and made over the case to the Trial Court for disposal in accordance with law.

3.12. On 29.11.2018, the Trial Court framed charges as follows:

Accused No.	Sections for Charges (IPC)				
A1 - Sakthi Venkatesh	120(b)	147	342	302	-
A2 - Anthonyraj,	120(b)	147	342	302	-
A3 - Maarimuthu,	120(b)	147	342	302	-
A4 - Anandaraj alias Thangaraj,	120(b)	147	342	302	-
A5 - Sudalaimani	120(b)	147	342	-	302 r/w. 109



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3.13. Thereafter, the Trial Court read over and explained the charges to them. The accused pleaded not guilty and claimed to be tried. Therefore, trial was ordered. With a view to prove the case, the prosecution examined P.W.1 to P.W.12 (Witnesses) and marked Ex.P.1 to Ex.P.28 (Documents) and M.O.1 to M.O.14 (Material Objects). After full trial, the Trial Court concluded that the prosecution has proved only the charge under Section 302 of IPC levelled against the A1 and A2 and accordingly convicted and sentenced A1 and A2 as stated *supra* in Paragraph No.2. Further, the Trial Court concluded that the charges under Sections 120(b), 147, 342 of IPC levelled against A1 and A2 were not proved and accordingly acquitted them for those charges.

3.14. Furthermore, the Trial Court concluded that none of the charges levelled against A3, A4 and A5 were proved and accordingly acquitted them for those charges.

4. Feeling aggrieved with the conviction recorded and sentence imposed by the Trial Court, A1 and A2 have preferred these Criminal Appeal under Section 374(2) of Cr.PC.



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WEB COPY **Submissions**

5. Heard Mr.V.Kathirvelu, learned Senior Counsel for the appellant in Crl.A.(MD) No.89 of 2020 [Sakthi Venkatesh - A1], Mr.V.Rajiv Rufus, learned counsel for the appellant in Crl.A.(MD) No.313 of 2021 [Anthony Raj - A2] and Mr.A.Thiruvadikumar, learned Additional Public Prosecutor for the respondent State.

6. The learned counsels for the appellants (A1 and A2) argued that the case is rested solely on circumstantial evidence; that there is no evidence available on record to show that at 19.50 hours on 06.06.2017, the accused assembled near the pole in Karunanidhi Nagar, conspired and resolved to kill the deceased; that there is no evidence on record to show that at 23.30 hours on 07.06.2017, the accused assembled together, wrongfully confined and abducted the deceased to the scene of occurrence and killed him by using Sickle and Knife; that the arrest and confession are not believable; that the evidence of P.W.1, P.W.2, P.W.3, P.W.6 and P.W.7 are not trustworthy and believable since they are closely related to the deceased; that the arrest and recovery are false and there is no independent witness adduced for the same; that the Trail Court rendered



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conviction not based on the evidence on record but merely the arguments advanced before the Trial Court. Further, they argued that there is no legal evidence to prove the alleged motive between the accused and the deceased; that the Trial Court rendered conviction and sentence solely based on surmise and conjectures but not legal evidence; that the Trial Court did not conduct the trial duly as per law and procedure; that the Trial Court relied on the confession statement allegedly given by the accused persons which are inadmissible in law.

6.1. Further, Mr.V.Rajiv Rufus, learned counsel appearing for the appellant in Crl.A.(MD) No.313 of 2021 [Anthony Raj - A2] argued that the alleged vehicle (TVS XL motorcycle bearing Registration No.‘TN 69 AQ 2716’) which is said to have been recovered from the appellant was not marked in this case.

6.2. Accordingly, both the learned counsels prayed to allow the appeal and set aside the impugned judgement and acquit the appellants.

7. In response, the learned Additional Public Prosecutor submitted that the prosecution proved that the deceased died due to homicide by



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examining the Post-mortem Doctor (P.W.8) and his report (Ex.P.15); that the prosecution proved the place of occurrence through evidence of Investigating Officer corroborated by the evidence of P.W.5 - Village Administrative Officer [henceforth VAO]; that the blood stains found in the scene of occurrence and the deceased are one and the same; that the blood in blood-stained shirts (M.O.8, M.O.10, M.O.11) matches with the deceased's blood; that the prosecution proved the said fact through FSL Report namely chemical analysis (P.W.27) and Serology Report (Ex.P.28); that the said Material Objects are admissible under Section 30 of the Indian Evidence Act, 1872 [henceforth referred to as 'Evidence Act' for the sake of brevity]; that the appellants did not deny or explain the said evidence while examination under Section 313(1)(b) of Cr.P.C. In short, he submitted that the prosecution proved the arrest and recovery which connects the accused with the crime. In support of his argument, he relied on the decision of the Hon'ble Supreme Court in ***Sharad's*** case [***Sharad Birdhichand Sarda Vs. State of Maharashtra, reported in 1984 SCC (Cri) 487 : (1984) 4 SCC 116 : AIR 1984 SC 1622***]. Accordingly, he prayed to sustain the Trial Court's conviction and sentence imposed against the appellants (A1 & A2).



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Points for consideration

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- i. Whether the prosecution has proved the charges levelled against the Accused Nos.1 & 2 under Section 302 of IPC beyond reasonable doubt?
- ii. Whether there exist any reason to interfere with the Impugned Judgement?

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

9. Before going into the merits of the case, it is apposite to state the legal position in respect of a case rested only upon circumstantial evidence. The Hon'ble Supreme Court in ***Hanumant***'s case [***Hanumant Vs. State of Madhya Pradesh, reported in (1952) 2 SCC 71***] has held as follows:

'11...In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof and therefore it is right to recall the warning addressed by Baron Alderson, to the jury in Reg v. Hodge ((1838) 2 Lew. 227), where he said:-



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"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

12. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused...'



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9.1. Further, the decision of the Hon'ble Supreme Court in ***Sharad Birdhichand Sarda's*** case [***Sharad Birdhichand Sarda Vs. State of Maharashtra reported in (1984) 4 SCC 116 : 1984 SCC (Cri) 487***] is construed to be *locus classicus* on the principles of circumstantial evidence. In the above said decision, the Hon'ble Supreme Court while referring to ***Hanumant's*** case held in Paragraph Nos.152, 153 & 154 as follows:

“152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656] . It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :



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“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and



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“must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”



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WEB COPY 9.2. In **Ashok Kumar Srivastava's** case [**State of Uttar Pradesh Vs.**

Ashok Kumar Srivastava reported in (1992) 2 SCC 86], the Hon'ble Supreme Court has pointed out that great care must be taken while evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be adopted. Further, the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

9.3. As far as the confession given by the A1 & A2 is concerned, if a confession is made after arrest and if it leads to discovery of new facts or recovery of any article, the same alone is admissible under Section 27 of the Evidence Act [*vide Pulukuri Kottaya Vs. King Emperor reported in AIR 1947 PC 67*].

9.4. In the light of the above legal principles, this Court approaches this case. The following circumstances have been projected by the prosecution to connect A1 & A2 to the offence for which they were convicted:-



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- i. The accused gathered on 06.06.2017 at 19.30 hours near the pole in Karunanidhi Nagar under the radiance of street-lamp and conspired and resolved to end the life of the deceased.
- ii. On 07.06.2017 at 23.30 hours, the accused and the deceased gathered near the pole in Karunanidhi Nagar under the radiance of street-lamp and consumed alcohol.
- iii. Thereafter, a scuffle developed between the deceased and the accused.
- iv. Thereafter, the accused abducted the deceased to the scene of occurrence.
- v. At 01.00 hours, the accused killed the deceased in Survey No. 205/C1 of Erachi Village by inflicting cut and stab injuries.
- vi. Arrest, confession and recovery.
- vii. Motive.

Circumstances (i) to (v)

10. P.W.1 - Bakiyanaathan who is none other than the father of the deceased deposed that the accused are known persons to the deceased; that at 20.30 hours on 07.06.2017, the deceased left home in his Pulsar Bike and did not return home even after a long time; that when he tried to reach the deceased via phone, the deceased's phone was switched off; that since it is usual for the deceased to come home late owing to his nature of work, P.W.1 and his family members thought that the deceased would come home later; that the following day ie., on 08.06.2017, upon seeing



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people gathered on the left side of Erachi-Kasavankundru Road while he was returning from Erachi, he approached to see what is happening and found the body of deceased and his bike. Then, at 11.00 hours on the same day, he preferred Ex.P.1 - Written Complaint at the Koppampatti Police Station. Since he does not know to write, the complaint was scribed by his fellow local – Maarichamy (L.W.4).

10.1. P.W.1, in his cross-examination, admitted that the accused were present in the hospital; that a few cases were registered against the deceased in the year 2012 and 2014 and the deceased was taken out on bail by him; that at 09.00 hours on 08.06.2017, police were present in the scene of occurrence when he found the dead body of the deceased at Erachi-Kasavankundru Road; that the police inquired him and obtained a statement; that Maarichamy (L.W.4), the person who wrote the complaint is his relative; that the Pulsar Bike is still at Koppampatti Police Station; that he or his family did not get the deceased's cell phone in their hand till the date of his deposition ie., 21.02.2019.

10.2. P.W.2 who is none other than the mother of the deceased and wife of P.W.1, deposed along the lines of P.W.1. Further, she deposed that



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only upon A2 calling the deceased to Karunanidhi Nagar urgently via phone, the deceased left the house in his Pulsar bike; there was some enmity between the accused and the deceased pertaining to conducting “Temple Kumbabishekam and festival”. P.W.2 in her cross-examination has deposed that A2 was present in the hospital at 10.00 hours on 08.06.2017 and that she did not question him about anything. Further, she deposed that she did not mention about A2 calling the deceased to Karunanidhi Nagar urgently the last night to the Investigating Officer and the existing enmity between the deceased and accused. The accused side put a suggestion to her that the deceased was killed by some unknown persons owing to some existing enmity which she denied.

10.3. P.W.3 is none other than the wife of the deceased. Due appreciation, careful consideration and mindful ignorance of certain minor contradictions in her evidence would show that she has deposed along the lines of P.W.1 and P.W.2.

10.4. It is pertinent to note here that P.W.11 in his evidence has admitted that the deceased's mobile phone was not seized and therefore was not produced before the Court; that no one has claimed the Pulsar



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Bike and therefore, it is still at Koppampatti Police Station; that it appears from the deceased's phone that P.W.1 has tried to contact the deceased multiple times; that generally witnesses and documents will not show where and with whom the deceased went; that he did not gather in his investigation anything about the previous enmity between the deceased and accused with regard to “Temple Kumbabishekam and festival”. The relevant portion of P.W.11's deposition is extracted hereunder:

□... இறந்து போன நபர் பயன்படுத்தி வந்த வாகனம் நாளது தேதிவரை கொப்பம்பட்டி காவல்நிலையத்தில் தான் இருந்து வருகிறது என்று சொன்னால் சரிதான். அதனை இதுநாள்வரை யாரும் உரிமை கொண்டாடி வரவில்லை என்றால் சரிதான். வாகனத்தின் உரிமையாளர் யார் என்பதும், எங்களது விசாரணையில் துலங்காது என்று சொன்னால் சரிதான். இறந்துபோன ராஜா பயன்படுத்திய கைபேசியை கைப்பற்றவும் இல்லை அதனால் வழக்கில் ஒரு சொத்தாக குறியீடு செய்யவும் இல்லை என்றால் சரிதான். அசா.1 பாக்கியநாதன் ஆகிய இறந்தவரின் தந்தை பலமுறை இறந்தநபரின் கைபேசிக்கு தொடர்பு கொண்டுள்ளார் என்று காணப்படுகிறது என்றால் சரிதான். பொதுவாக இறந்துபோன நபர் இறுதியாக யாருடன் எங்கு சென்றார் என்ற விபரங்கள் எதுவும் எந்த சாட்சியங்கள் மூலமும், ஆவணங்கள் மூலமும் வழக்கு கோப்பில் துலங்காது என்று சொன்னால் சரிதான். கோவில் திருவிழா



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நடத்துவது சம்பந்தமாக இறந்தநபருக்கும், எதிரிகளுக்கும்
முன்பகை இருந்த வந்தது என்று எங்களது விசாரணையில்
தலங்காது என்றால் சரிதான்.□

10.5. On analysis of the evidence of P.W.2 and P.W.3, it can be seen that in their Statement under Section 161(3) of Cr.P.C, they have not stated anything about A2 calling the deceased to Karunanidhi Nagar urgently the last night. P.W.1 to P.W.3 in their evidence have admitted that A2 was present in the hospital at 10.00 hours on 08.06.2017 and that she did not question him about anything. Further, they have not stated about A2 to the Investigating Officer.

10.6. Considering the above said aspects, the evidence of P.W.1 to P.W.3 as to A2 calling the deceased the night before the incident ie., on 07.06.2017 does not inspire confidence of this Court as, if really A2 had called the deceased the night before the incident, P.W.1 to P.W.3 would have naturally posed questions to A2 much less informed the Investigating Officer about it. Hence, the evidence of P.W.2 and P.W.3 pertaining to the above-mentioned aspect of A2 calling the deceased could be a later improvement which amounts to contradiction.



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WEB COPY 10.7. Further, the Investigating Officer has neither collected the Call Detail Register (CDR) of the deceased's mobile phone nor that of A2 or that of any other accused for that matter. To be noted, since the case is solely rested on circumstantial evidence, CDR of the deceased's mobile phone and the accused's mobile phones play a crucial role in establishing the prosecution case and therefore, the Investigating Officer ought to have collected the CDR and tower locations of the deceased and the accused. To be noted, no plausible explanation has been offered in this regard which adds to the suspicion over the prosecution's case.

10.8. P.W.4 - Santhosh who was examined by the prosecution to prove the factum of conspiracy, has not supported the case of the prosecution as he has deposed that he saw the deceased near the pole all alone at 22.30 hours on 07.06.2017 and made no mention of the accused. To be noted, the prosecution did not seek permission from the Trial Court to cross-examine P.W.4 under Section 154 of the Evidence Act.

10.9. This Court deems fit to observe that in the list of witnesses annexed along with the final report, apart from P.W.5, there are three



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more witnesses namely Vetri (L.W.6), Rajesh (L.W.7) and Selvam (L.W.8) listed to prove the factum of conspiracy. But, L.W.6 and L.W.7 have not been examined and L.W.8 was examined as P.W.12 after the examination of the Investigation Officer which is not a fair trial procedure and unusual in the Criminal Jurisprudence. Even then, P.W.12 has not supported the prosecution case with regard to the factum of conspiracy.

10.10. P.W.5 - Valliammal, Village Administrative Officer (In-charge) of Erachi Village is the Observation Mahazar and Rough Sketch witness. She deposed that the Investigating Officer inspected the place of occurrence, prepared a Rough Sketch and collected M.O.1 to M.O.4 under the Seizure Mahazar (Ex.P3). Thus, the prosecution has proved the place of occurrence and collection M.O.1 to M.O.4 in the place of occurrence.

10.11. P.W.11 - Inspector of Police conducted inquest on the deceased's body in the presence of panchayatdars, prepared Inquest Report (Ex.P.19) and thereafter sent the body to the Government Hospital, Kovilpati for post-mortem. The Post-mortem Report was marked as Ex.P.

15. Post-mortem Report (Ex.P15) reads as follows:



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The body was first seen by the undersigned at 3 PM on 8/6/17

Condition then was Rigor mortis (+)

Postmortem commenced at 3 PM on 8/6/17

Appearance found at the postmortem:

External Examination:

Body of above individual lying its back with all four limbs extended appearance. Rigor mortis (+) Tatoo mark on (L) Chest (S. Bakiyanathan. R. Mari Selvam in Tamil).

- (1) Incision like wound in front Neck extending to (L) side Neck about 15 X 5 X 10 cm exposing trachea, larynx, mandible. Bleeding (P), Red colour wound.
- (2) Incision like wound (R) shoulder 5 x 3 x 2 cm Bleed (p). Red Colour.
- (3) Incision like wound (R) Forearm (Proximal) 12 X 5 X 5 cm exposing radial, ulnar bone. Red colour. Bleed (P).
- (4) Incision like wound (R) chest 6 X 3 X 3 cm, Red Colour, Bleed (P).
- (5) Incision like wound (L) shoulder 5 X 3 X 3 cm.
- (6) Partially amputated (L) index finger with incision like wound 3 X 2 X 1 cm.
- (7) Incision like wound (L) side neck extending to back neck 27 X 7 X 7 cm exposing cervical bone and muscles.
- (8) Incision like wound over occipital region of head 20 X 4 X 3 cm exposing occipital bone.
- (9) Incision like wound over back head 3 in number each 10 X 2 X 2 cm.
- (10) Incision like wound over vertex of head 2 in number (two) each 10 X 2 X 2 cm.
- (11) Incision like wound (R) shoulder back 12 X 3 X 3 cm.



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(12) Incision like wound (L) Gluteal region 5 X 3 X 3 cm; All wound in Red colour with bleed (P).

Internal Examination: Thorax (1) Ribs – Normal (2) Lungs, heart – pale, Normal (3) Hyoid bone: Fractured in (L) side horn (4) stomach – empty normal (5) Liver, Spleen, Kidney – pale – normal (6) Intestine, Urinary Bladder – Normal, bladder – empty (7) Skull – parietal bone fracture (p) (L) side; 2 in number each 4 X 1 X 1 cm (undisplaced); Brain – pale, Normal but hemorrhage in (L) parietal lobe.

Opinion: Death due multiple injuries, hemorrhagic shock and head injury and cervical spine injury; 16-24 hours prior to autopsy.

10.12. From the above evidence, it is clear that the prosecution has proved that the deceased died due to homicidal death.

Circumstance (vi)

Arrest of A2 and A5 and Recovery thereof

11. According to the prosecution, the Investigating Officer arrested A2 and A5 on 09.06.2017 at 13 hours at Kilavipatti Bus-stop in the presence of the witnesses P.W.6 - Maarichamy and his brother L.W.12 -Thangamaariappan. Further, the Investigating Officer in his evidence has deposed that on 09.06.2017, he arrested A2 and A5 who came in a TVS XL Motorcycle bearing Registration No.TN 69 XU 2716, based on a



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secret tip, at Kilavipatti Bus-stop in the presence of the witnesses Marisamy (P.W.6) and Thangamaariappan (L.W.12). Then, A2 handed over a blood-stained Knife (M.O.5), blood-stained Shirt (M.O.6) and the TVS XL (Registration No.TN 69 XU 2716; not marked). Further, he deposed that he seized the above-mentioned Material Objects under the Ex.P.6. - Seizure Mahazar.

11.1. P.W.6 - Maarichamy is the maternal uncle of the deceased who scribed the Ex.P.1 - Complaint. P.W.6 in his evidence has admitted that he is residing 10 kilometer away from the place of arrest. The evidence of P.W.6 and the Investigating Officer that A2 and A5 were carrying (hiding) the blood-stained Shirt and blood-stained Sickle along with them in their TVS XL Motorcycle even a day after the incident is highly doubtful. Moreover, if really A2 and A5 were arrested in a public place like Bus-stop, naturally there would have been some other independent witnesses who could have been cited as witness. Hence, this Court is of the view that arrest of A2 and A5 and subsequent recoveries are riddled with doubts. The learned Additional Public Prosecutor drew this Court's attention to Ex.P.27 and Ex.P.28 to argue that the blood stains found in the recovered material were human blood. However, as stated



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supra, the arrest and recovery being unnatural, does not inspire confidence of this Court.

Arrest of A1, A3 and A4 and Recovery thereof

11.2. According to the prosecution, the Investigating Officer arrested A1, A3 and A4 on 10.06.2017 at 07.00 hours at Silandipatti Bus-stop in the presence of the witnesses P.W.7 - Muthumani and L.W.14 - Balamurugan. Further, the Investigating Officer in his evidence has deposed that at 10.00 hours, he apprehended and arrested A1, A3 and A4 who came in a Splendor Bike bearing Registration No.'TN 67 BB 4609' in the presence of witnesses Muthumani (P.W.7) and Balamurugan (L.W. 14). Then he recorded the voluntary confession statement given by A1-Sakthi Venkatesh. This Court perused Ex.P.22 - admissible portion of the alleged confession given by A1. Based on their confession, he recovered Splendor bike bearing Registration No.'TN 67 BB 4609' (M.O.9), blood-stained Sickle (M.O.7) and three blood-stained Shirts (M.O.8, M.O.10, M.O.11). P.W.7 - Muthumani is none other than the son of P.W.6 who in turn is the maternal uncle of the deceased. The other witness Balamurugan was not examined in this case. As stated *supra*, if really A1, A3 and A4 were arrested in a public place like Bus-stop, naturally there would have



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been some other independent witnesses who could have been cited as witness. Further, the learned Additional Public Prosecutor drew this Court's attention to Ex.P.27 and Ex.P.28 to argue that the blood stains found in two of the recovered blood-stained Shirts matches with the blood group of the deceased. However, it is not clear as to whose shirt had the deceased's blood and whose shirt did not have the deceased blood as they are not marked clearly. Considering the cumulative circumstances revolving around the case, these recoveries are surrounded by suspicion and therefore does not inspire the confidence of the court.

11.3. The learned Additional Public Prosecutor drew the attention of this Court to Ex.P.27 and Ex.P.28 and argued that the accused did not deny Ex.P.27 and Ex.P.28 document and the recovery of the blood-stained Shirts (M.O.8, M.O.10, M.O.11); that the accused did not offer any explanation in this regard during his Section 313(1)(b) of Cr.P.C. examination and submitted that hence, the prosecution has proved strong circumstances against the accused which the accused have not contested.

11.4. In this case, this Court has perused the examination of the accused under Section 313(1)(b) of Cr.P.C. Depositions of P.W.1 to P.W.



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10 were bundled and put as one single question to A1 & A2. Then, a major portion of the deposition of P.W.11 was posed as one single question to A1 and A2. Hence, A1 and A2 might not have been able to put forth a rational and intelligible explanation [*vide Jai Prakash Tiwari Vs. State of Madhya Pradesh reported in 2022 LIVELAW (SC) 658*]. Therefore, it can be seen that principles of natural justice have not been duly followed in this case by the Trial Court. It is pertinent to reiterate that the examination of the accused under Section 313 of Cr.P.C is not an empty formality. The Hon'ble Supreme Court in *Indrakunwar's* case [*Indrakunwar Vs. State of Chhattisgarh reported in (2023) SCC OnLine SC 1364*] held in paragraph 34 as follows:

34. A perusal of various judgments rendered by this Court reveals the following principles, as evolved over time when considering such statements.

34.1 The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.

34.2 The intent is to establish a dialogue between the Court and the accused. This process



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benefits the accused and aids the Court in arriving at the final verdict.

34.3 The process enshrined is not a matter of procedural formality but is based on the cardinal principle of natural justice, i.e., audi alterum partem.

34.4 The ultimate test when concerned with the compliance of the Section is to enquire and ensure whether the accused got the opportunity to say his piece.

34.5 In such a statement, the accused may or may not admit involvement or any incriminating circumstance or may even offer an alternative version of events or interpretation. The accused may not be put to prejudice by any omission or inadequate questioning.

34.6 The right to remain silent or any answer to a question which may be false shall not be used to his detriment, being the sole reason.

34.7 This statement cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence. It does not discharge but reduces



the prosecution's burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.

34.8 This statement is to be read as a whole. One part cannot be read in isolation.

34.9 Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act, 1872; however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.

34.10 The circumstances not put to the accused while rendering his statement under the Section are to be excluded from consideration as no opportunity has been afforded to him to explain them.

34.11 The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence. The defence so articulated must be carefully scrutinized and considered.

34.12 Non-compliance with the Section may



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cause prejudice to the accused and may impede the process of arriving at a fair decision.

11.5. Moreover, the Hon'ble Supreme Court in ***Sharad's case*** referred to *supra* has held that, the circumstances not put to the accused under Section 313(1)(b) of Cr.P.C. have to be excluded from consideration completely. The relevant paragraphs ie., 143-145 are thus.

“143. ... As these circumstances were not put to the appellant in his statement under Section 313 of the Criminal Procedure Code, 1973 they must be completely excluded from consideration because the appellant did not have any chance to explain them. This has been consistently held by this Court as far back as 1953 where in the case of Hate Singh Bhagat Singh v. State of Madhya Pradesh [1951 SCC 1060 : AIR 1953 SC 468 : 1953 Cri LJ 1933] this Court held that any circumstance in respect of which an accused was not examined under Section 342 of the Criminal Procedure Code cannot be used against him. Ever since this decision, there is a catena of authorities of this Court uniformly taking the view that unless the circumstance appearing against an accused is put to him in his examination under Section 342 of the old



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Code (corresponding to Section 313 of the Criminal Procedure Code, 1973), the same cannot be used against him. In Shamu Balu Chaugule v. State of Maharashtra [(1976) 1 SCC 438 : 1976 SCC (Cri) 56] this Court held thus: [SCC para 5, p. 440: SCC (Cri) p. 58]

“The fact that the appellant was said to be absconding, not having been put to him under Section 342, Criminal Procedure Code, could not be used against him.”

144. To the same effect is another decision of this Court in Harijan Megha Jesha v. State of Gujarat [1979 SCC (Cri) 652: AIR 1979 SC 1566 : 1979 Cri LJ 1137] where the following observations were made: [SCC (Cri) p. 653, para 3]

“In the first place, he stated that on the personal search of the appellant a chedi was found which was blood stained and according to the report of the serologist, it contained human blood. Unfortunately, however, as this circumstance was not put to the accused in his statement under Section 342, the prosecution cannot be permitted to rely on this statement in order to convict the appellant....”

145. It is not necessary for us to multiply authorities on this point as this question now stands concluded by several decisions of this Court. In this



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view of the matter, the circumstances which were not put to the appellant in his examination under Section 313 of the Criminal Procedure Code, 1973 have to be completely excluded from consideration.

11.6. Further, in paragraph 151, the Hon'ble Supreme court has held thus:

151. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a court.

Circumstance (vii) - Motive

12. In a Criminal Case, motive is irrelevant if ocular witnesses are



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available. At the same time, if a case is rested upon Circumstantial Evidence, motive is also an additional link to prove the prosecution case.

In this case, the alleged motive for the crime is as follows:

- (a) The deceased used to often go to the street in Karunanidhi Nagar, Kovilpatti where the accused were residing and verbally abuse the accused.
- (b) Further, two months before the occurrence, the deceased knocked A2 off bike, picked up a quarrel and verbally abused A2 and his friends, calling himself a big shot of the street and the next “Rocket Raja”
- (c) Some enmity between the accused and the deceased pertaining to conducting Temple 'Kumbhaabhishekam' and festival. The above-said aspect has been deposed by PW2 for the first time in the witness box.

12.1. It is pertinent to note that there is no evidence on record to prove the above-mentioned motives. Hence, this Court is of the view that the prosecution has miserably failed to establish the alleged motive.

13. In view of the above discussion, this Court concluded that the prosecution miserably failed to prove the Charge under section 302 of IPC



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against the A1 and A2. The Trial Court has erroneously relied on the confession statement of the A1 and A2 which is inadmissible under Sections 25 and 26 of the Evidence Act. Further, Trial Court rendered findings not based on the available evidence, but, based on the arguments made by the prosecution.

14. It is settled law that any fact discovered or articles recovered based on the confession alone is admissible under Section 27 of the Evidence Act. But the Trial Court convicted the A1 and A2 with the aid of inadmissible portion of the alleged confession statements. The said approach is not a fair trial procedure and unknown to the Criminal Jurisprudence. Further, it is a well established procedure in Criminal Trial that the private witnesses has to be examined before the examination of the Investigating Officer. In this case, P.W.12 who is shown as a witness to prove conspiracy was examined after P.W.11 - Investigating Officer with no plausible explanation offered for the same. Considering the cumulative circumstances of the case, this Court is of the view that the prosecution has miserably failed to establish its case. Therefore, this Court is inclined to allow these Criminal Appeals. Point Nos.(i) & (ii) are answered accordingly.



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15. The findings of the Trial Court in paragraph 93 of the impugned Judgment with regard to return of M.O.1 (Pulsar bike bearing Reg.No.TN 67 AS 9229) and M.O.9 (Splender bike bearing Reg. No.TN 67 BB 4609) and TVS XL motorcycle bearing Reg. No.TN 69 AQ 2716 are not interfered with by this Court.

16. Resultantly,

- i. These Criminal Appeals are allowed.
- ii. The impugned Judgment dated 04.09.2019 passed by the learned II Additional District & Sessions Judge, Thoothukudi in S.C.No.295 of 2018, as far as the A1 and A2 (appellants) are concerned, is hereby set aside. A1 and A2 (appellants) are acquitted from the charges levelled against them.
- iii. The bail bond if any, executed by the A1 and A2 (appellants) shall stand discharged. The fine amount if any paid by the A1 and A2 (appellants) shall be refunded to them.

(M.S., J.) (R.S.V., J.)
07.12.2023

Index: Yes



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Neutral Citation: Yes

Internet: Yes

Speaking order

JEN

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M.SUNDAR, J.

I had the benefit of perusing the common judgment penned by brother Hon'ble R.Sakthivel.J. I am in absolute agreement. Besides concurring with brother, I deem it appropriate to add the following:

(a)In this case, in the course of hearing captioned Criminal Appeals, a need arose to peruse the answers of the accused explaining the circumstances appearing in evidence against them and for this purpose, this Court had to take recourse to trial Court records and peruse the questioning under Section 313 of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity]. This would be evident from paragraphs 11.3 and 11.4 of common judgment penned by brother Hon'ble R.Sakthivel.J.,. In this view of the matter, I am



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not delving into how and why the need arose to peruse the section 313 Cr.PC questioning and the answers of the accused as paragraphs 11.3 and 11.4 of brother's Judgement articulates how and why the need arose. Therefore, it will suffice to say that paragraphs 11.3 and 11.4 shall be referred to in this regard (without setting out the same again). We had to ferret out the Section 313 Cr.PC questioning and peruse the answers of the accused/appellants wherein the accused/appellants have explained the circumstances appearing in the evidence against them. Notwithstanding this position, in the typed set of papers that is being indexed and prepared by the Registry (to be noted, typed set containing charges, deposition of witnesses, exhibits, list of material objects, trial Court judgment, grounds of appeal, etc.), the questions and answers in the legal drill under Section 313 Cr.PC is not included. This is causing difficulty to the Counsel and Court as the typed set prepared by the Registry serves as the convenience set and functions as the fulcrum of a criminal appeal hearing. This is only an



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illustration, as it comes to light from past experience, in most cases, the Court is required to look into the questioning under section 313 Cr.PC and the answers of the accused. Therefore, this Bench is of the considered view that it is imperative that this questions and answers in Section 313 Cr.PC drill in the trial Court is also included in the typed set which serves as a convenience set and functions as fulcrum of a criminal appeal hearing irrespective of whether hard copies are placed before the Bench or the same is placed before the Court by way of soft copies i.e., in digital form. In this regard, it is to be noted that inconvenience caused to the Bar is much more qua Bench. The reason is the entire lower court records are transmitted to the Bench when a criminal appeal is taken up for hearing and this lower court records contain the section 313 Cr.PC questioning and answers but as regards the counsel and learned Prosecutor arguing the criminal appeal if they want to peruse the section 313 Cr.PC questioning and answers of the accused, they have to apply for the certified copies and obtain the



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same either physically or online.

(b)Therefore, this Bench is of the considered view that a suitable direction should be given to the Registry for issuing an appropriate circular inter-alia directing the Registry of this Court to henceforth include in all Criminal Appeals the questions and answers in Section 313 Cr.PC legal drill (subject only to Rule 168(2)(iii) and proviso thereof of The Criminal Rules of Practice, 2019) in the typed set to be prepared (either hard copies or digitally) preferably from 01.01.2024.

(c)This Court makes it clear that this is a suggestion (though made as part of this judicial order, i.e., judgment) and therefore, implementation of this suggestion will be subject to orders of Hon'ble Chief Justice on the administrative side.

2 Registry to place a copy of this judgment before Hon'ble Chief Justice (on the administrative side) and seek suitable orders.

(M.S., J.)
07.12.2023



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To

1.The Inspector of Police,
Koppampatti Police Station,
Thoothukudi District.

2.The II Additional District and Sessions Judge,
II Additional District and Sessions Court,
Thoothukudi.

3.The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

JEN

Pre-Delivery Common Judgment made
in
Crl.A.(MD) Nos.89 of 2020 & 313 of 2021

07.12.2023