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Crl.A.Nos. 228 and 229 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.Nos. 228 and 229 of 2019

Crl.A.No.228 of 2019

1.Mahendiran

2.Kalidasan

...Appellants /A1 and A2

v.

State represented by
Inspector of Police,
Melpadi Police Station,
Katpadi, Vellore.
(Crime No.156 of 2014)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellants/accused and sentence in S.C.No.186 of 2017 dated 30.01.2019, on the file of the learned Additional and District Sessions Judge, Vellore, and set aside the conviction and sentence imposed in judgment dated 30.01.2019 and acquit the appellants/accused.



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Crl.A.No.229 of 2019

1. Mahendiran

2. Kalidasan

...Appellants /A1 and A2

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For 1st appellant/A1 in both cases : Mr.M.R.Thangavel

2nd appellant/A2 in both cases : Mr.S.Karthikeyan

For Respondent : Mr.A.Gokulakrishnan
in both cases Additional Public Prosecutor



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COMMON JUDGMENT

(Order of the Court was made by ***SUNDER MOHAN,J.***)

Challenging the conviction and sentence imposed upon them vide two judgments, both dated 30.01.2019 in S.C.Nos.186 of 2017 and 185 of 2017, on the file of the learned Additional District and Sessions Judge, FTC-I, Vellore, Accused Nos.1 and 2 have preferred Crl.A.Nos.228 and 229 of 2019. As both the Sessions cases arise out of offences committed in the course of the same transactions, both appeals are taken up together, heard and disposed of by way of this Common Judgment.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. (i) The prosecution case broadly is that the appellants had kidnapped one Bhimsingh and his son on 12.10.2014 at about 11.00 a.m., in a TATA Sumo car and caused the deaths of the said Bhimsingh and his son Manoj by forcing Bhimsingh (father) to have liquor mixed with



poisonous substances and thereafter causing the death of the son by injecting his neck with a vacuum syringe and, strangulating him to death.

(ii) However, since the bodies of the father and son were found in two different places and were found by the Village Administrative Officers incharge of those places, separate FIRs in Cr.Nos.156 of 2017 and 157 of 2017, were registered by the respondent police. During the course of the investigation, it appears that the investigating officer had realised that both murders were committed in the course of the same transaction and the 2nd charge under Section 364 of the IPC, which states that both were kidnapped for committing murder, confirms the same. However, the respondent had committed a procedural irregularity by filing separate final reports in respect of the murder of the father and the son. The trial Judge conducted the trial separately but simultaneously and rendered the Judgment on the same day.

(iii) Though the nature of evidence in both cases is very much similar, the witnesses examined in the two cases are slightly different. The



procedure adopted by the respondent police is palpably wrong and opposed to Part-B of Chapter XVII of the Cr.P.C., relating to the joinder of the charges.

(iv) In a very similar case in ***K.Thoosimuthu and others vs. The State of Tamil Nadu and others*** reported in 2019-2-LW(Crl) 655, this Court held that by virtue of Section 223 (d) of the Cr.P.C., the murders, which have been committed in the course of the same transaction, that are related to one another in point of purpose and constitute one continuous action, ought to be tried jointly. The relevant portion of the said Judgment reads as follows:

“29. This Court has to squarely blame the learned I-Additional District and Sessions Judge, Madurai, who is supposed to have identified that the case squarely falls under Section 223(d) of Cr.P.C. Even, if the prosecution has committed a mistake, it is for the trial Court to have rectified that mistake. The trial Court ought to have taken both the Final Reports and brought the case under Section 223(d) of Cr.P.C. and framed common charges against the accused persons and conducted a single trial in this case. A Sessions Judge is supposed to know this fundamental principle of



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joinder of charges and the manner in which, the trial has proceeded in this case really shocks this Court. It is not known as to why, all of a sudden the trial Court, which was proceeding further conducting a simultaneous trial, stopped the trial in one case and proceeded with the trial in the other case and passed a judgment. It is a fundamental mistake to have conducted a simultaneous trial in this case. This mistake was confounded by stopping the trial abruptly in one case. The procedure adopted by the Court below is patently illegal, resulting in miscarriage of justice. In a double murder case for gain, this was not what was expected of a Sessions Court. The Second case ultimately ended in acquittal, after nearly two years, in a different Court. Obviously dealing with offences committed in the course of the same transaction with two different trials, will certainly weaken the case of the prosecution. Separate trials in this case will naturally result in an incomplete comprehension of the totality of the crime. This Court is of the considered view that such serious procedural lapses on the part of the trial Court should not be allowed to be taken advantage by the accused persons.”

(v) In the above-referred case, as could be seen, one case ended in conviction and the other case ended in acquittal. Though, in the instant case, both cases ended in conviction, the procedure adopted by the prosecution and by the trial Court, could have resulted in conflicting



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decisions. Therefore, we are of the view that the two separate trials for the two murders, are a grave procedural lapse on the part of the trial Judge.

(vi) We find that the trial Court has committed another grave error while appreciating the evidence in the case. The trial Court had taken into consideration the evidence in one case, in the other case by citing Section 33 of the Indian Evidence Act. Section 33 of the Indian Evidence Act makes the evidence given by a witness in a judicial proceeding relevant for proving the truth of the facts it states provided the witness is dead, cannot be found, or is incapable of giving evidence, etc. There is no discussion as to how Section 33 of the Indian Evidence Act, can be invoked for relying upon the evidence let in another case. However, we do not propose to set aside the Judgments on the ground of procedural irregularities in view of the decision that we propose to take on the merits of the case.

4. It is the case of the prosecution that A1 had made a false promise to secure a job for one Manoj [hereinafter referred to as 'D2'], victim in



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Crl.A.No.229 of 2019, and had obtained a sum of Rs.1,30,000/- from his father-Bhimsingh [hereinafter referred to as 'D1'], deceased in Crl.A.No.228 of 2019; that since, he did not secure a job, both the deceased 1 and 2 have asked for return of money and infuriated by that, A1 decided to do away with both the deceased with the help of A2; that on 12.10.2014, A1 and A2 took the deceased persons in a TATA Sumo vehicle to an isolated place and gave alcohol mixed with pesticide to D1 and thereafter, committed the murder of D2 by injecting his neck with a vacuum syringe and later strangulating to death and dropped a stone on his head and thereafter, set fire to the body of both the deceased.

5. Though the facts are interconnected, since the evidence adduced by the prosecution is different, we would deal with the evidence adduced in each of the cases separately.

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6.(i) PW1-Village Administrative Officer of Mahimandalam Village, found the body of the deceased on 13.10.2014, which was half-burnt, the



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face was fully-burnt and mutilated. He had lodged a complaint [Ex.P1]. PW23 registered the FIR [Ex.P25] in Cr.No.156 of 2014. PW25, took up the investigation, prepared the Observation Mahazar [Ex.P30] and Rough Sketch [Ex.P31], conducted inquest, made arrangements for conducting the postmortem of the deceased and since, the identity of the deceased in both the cases could not be ascertained, he made enquires in the neighbouring villages and also learnt that there was a movement of a TATA sumo car near the occurrence and on further enquires, found that a TATA sumo car in the Village Chinnakasakuppam was not available in the village and the driver (A2) and his friend (A1) were not in station, on suspicion, he collected the Call Detail Records of A1 and A2 and found that they had contacted two mobile numbers viz., 9459229119 and 8894013258 and when he contacted the said two numbers, one Rajakumari, wife of D1 answered and stated that D1 and her son D2 had come to Tamilnadu for getting a job for D2. PW25 thereafter, proceeded on the basis that the deceased in Cr.No.156 of 2014 is Bhimsingh (D1) and the deceased in Cr.No.157 of 2014 is his son Manoj (D2).



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(ii) On 15.10.2014, PW25, during the course of investigation, intercepted a TATA Sumo car bearing Regn.No.TN25 M 1967 and ascertained that persons travelling in the car (the accused herein) were involved in the offences registered in the two crime numbers. He arrested both the accused and on the confession of accused, recovered Rs.8,000/- and two ATM cards from A1 and a pocket diary from the residence of A2, in which certain monetary transactions were found besides the phone number and addresses of certain individuals. He seized the syringe and other articles found in the place of occurrence and therefore examined the owners of the lodge, where the deceased were staying. After examining the other witnesses, filed the final report under Sections 120-B, 364, 302, 328, 404 and 201 r/w 34 of the IPC.

(iii) On the appearance of the appellants, the provisions of Section 207 Cr.P.C., were complied with and were committed to the Court of Session in S.C.No.186 of 2017 and made over to the learned Additional District and Sessions Judge, FTC, Vellore, for trial. The trial Court framed charges for the offences under Sections 120-B r/w 34, 364 r/w 34, 328 r/w



34, 302 r/w 34, 404 r/w 34, and 201 r/w 34 of the IPC against the appellants, and when questioned, the appellants pleaded 'not guilty'.

(iv) To prove the case, the prosecution examined 25 witnesses as P.W.1 to P.W.25, marked 33 exhibits as Exs.P1 to Ex.P33 and marked 5 material objects as M.O.1 to M.O.5. When the appellants were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The appellants neither examined any witnesses nor marked any documents on their side.

(v) The prosecution examined the following witnesses.

(a) PW1, the VAO, who first found the body of the deceased and gave the complaint [Ex.P1]; PW2, the Village Clerk, who accompanied PW1 to the scene of the occurrence. PW3, the Village Assistant, also accompanied PW1 to the scene of the occurrence. PW4 is the witness to the observation and recovery mahazar, who turned hostile; PW5, the owner of the pesticide shop, who had sold pesticide to the accused and stated that the accused bought pesticide and left without receiving the bill. PW6 and PW7, who



had supplied petrol, according to the prosecution, turned hostile. PW8 is the employee of the lodge, who had made the booking for the deceased in his lodge; PW9 is the owner of the lodge, who had marked Ex.P4 to Ex.P9, the Register and the other documents in the lodge. PW10 is the owner of the Medical Shop, who had sold the syringe to the accused and stated that before he could give the bill, the accused left.

(b) PW11 is the Panchayat Secretary, who had gone to the place of occurrence along with the Village Administrative Officer-PW1. PW12 is the car mechanic and speaks about the purchase of TATA Sumo car and the payment of Rs.1,00,000/- by A2 to one Babu. PW13 is the Scientific Officer of the Forensic Sciences Department, who issued the viscera report, Ex.P7. PW14 is the petrol supplier, who has turned hostile. PW15 is the witness to the Observation and seizure mahazar marked as Ex.P30 and Ex.31, respectively.

(c) PW16 is the official photographer. PW17 is the Constable, who translated the statement of the wife of D1 given to the police. PW18, is the



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handwriting expert. PW19 is the postmortem doctor. PW20 is the nodal officer of TATA DOCOMO. PW21 is the nodal officer of AIRTEL. PW22 is the Sub-Inspector who assisted the investigation; PW23 is the Sub-Inspector, who registered the FIR; PW24 is the nodal officer of BSNL; and PW25 is the investigating officer.

(vi) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt and held the accused guilty of the offences under Sections 120-B r/w 34, 364 r/w 34, 302 r/w 34, 404 r/w 34, and 201 r/w 34 of the IPC. Thereafter on 07.02.2019, the appellants were sentenced, as follows:

<i>Appeal No., S.C.No. & Accused No.</i>	<i>Offence under</i>	<i>Sentence imposed</i>
Crl.No.228 of 2019 S.C.No.186 of 2017 A1 & A2	302 r/w 34 IPC	Each of them to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo RI for one year.
	364 r/w 34 IPC	Each of them to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo RI for one year.
	201 r/w 34 IPC	Each of them to undergo RI for seven years and to pay a fine of Rs.1,000/-, in default to undergo RI for one year.
The sentences were ordered to run concurrently.		



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7. (i) In this case, the body of the deceased was found by PW1, who was the Village Administrative Officer in charge of Melpadi Village and on information, he found the body of the deceased and a syringe near the body of the deceased at about 7.00 a.m, on 13.10.2014. PW25, the investigating officer in the other case, who was examined as PW21 in this case, commenced the investigation. We had narrated the details of the investigation conducted by him while discussing the facts in Crl.A.No.228 of 2019. He filed the final report for the offences in respect of this deceased (D2) before the learned Judicial Magistrate, Katpadi.

(ii) On the appearance of the appellants, the provisions of Section 207 Cr.P.C., were complied with and were committed to the Court of Session in S.C.No.185 of 2017 and made over to the learned Additional District and Sessions Judge, FTC, Vellore, for trial. The trial Court framed charges for the offences under Sections 120-B r/w 34, 364 r/w 34, 302 r/w 34, and 201 r/w 34 of the IPC against the appellants, and when questioned, the appellants pleaded 'not guilty'.



(iii) To prove the case, the prosecution examined 21 witnesses as P.W.1 to P.W.21, marked 43 exhibits as Exs.P1 to Ex.P43 and marked 21 material objects as M.O.1 to M.O.21. When the appellants were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The appellants neither examined any witnesses nor marked any documents on their side.

(iv) In the instant case, the prosecution had examined 21 witnesses. PW1 is the Village Administrative Officer, who found the body of the deceased in this case-D2. PW2 is the Mahazar witness; PW3 is the owner of the Medical Shop; PW4 is the owner of the Pesticide Shop; PW5 to PW7, who had allegedly supplied petrol, have turned hostile. PW8 is the owner of the lodge. PW9 is the photographer. PW10 is the Special Sub Inspector, who has given a special report [Ex.P14]. PW11 is the post-mortem doctor. PW12 is the nodal officer of BSNL. PW13 is the employee of the lodge who had booked the room. PW14 is the car mechanic. PW15 is the constable who translated the statement of the wife of D1. PW16 is the Sub Inspector of Police who registered the FIR. PW17 is the Scientific Officer



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from the Forensic Sciences Laboratory who has issued viscera, biological, serological and chemical analysis reports viz., Ex.P26 to Ex.P28. PW18 is the nodal officer of TATA DOCOMO. PW19 is the nodal officer of AIRTEL. PW20 is the Constable who assisted the investigation and PW21, as stated earlier, is the investigating officer in both cases.

(v) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt and held accused guilty of the offences under Sections 120-B r/w 34, 404 r/w 34, 302 r/w 34, 364 r/w 34 and 201 r/w 34 of the IPC. Thereafter, on 07.02.2019, the appellants were sentenced as follows:

<i>Appeal No., S.C.No. & Accused No.</i>	<i>Offence under</i>	<i>Sentence imposed</i>
Crl.No.229 of 2019 S.C.No.185 of 2017 A1 & A2	302 r/w 34 IPC	Each of them to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo RI for one year.
	364 r/w 34 IPC	Each of them to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo RI for one year.
	201 r/w 34 IPC	Each of them to undergo RI for seven years and to pay a fine of Rs.1,000/-, in default to undergo RI for one year.
The sentences were ordered to run concurrently.		



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Hence, the accused have preferred these appeals, challenging the said conviction and sentence.

8. Heard, Mr.M.R.Thangavel, learned counsel appearing for 1st appellant/A1; Mr.S.Karthikeyan, learned counsel appearing for 2nd appellant/A2; and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/State.

9. The learned counsels for the appellants submitted that the appellants are entitled to acquittal on the sole ground that the prosecution has failed to establish the identity of the deceased; that the investigating officer has committed a grave procedural lapse in filing two final reports in respect of two alleged murders committed in the course of the same transaction; and that the trial Court had committed procedural irregularity in trying the two cases separately and relying upon inadmissible evidence to hold the appellants guilty of the offence.



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10. The learned Additional Public Prosecutor for the respondents, *per contra*, submitted that the prosecution has established the circumstance of motive, last seen together and the arrest and recovery of material objects from the accused, which conclusively established the involvement of the accused and that there is no reason to interfere with the Judgments of the Trial Court.

11. We have carefully considered the rival submissions and have perused all the relevant records.

12. Both of these cases are based on circumstantial evidence. It is the prosecution case that one Rajakumari came to Chennai on 15.10.2014 at the instance of the investigating officer and identified the bodies of both the deceased, which were in the mortuary. One Vilvijayan, the police constable who was examined PW17 in S.C.No.186 of 2017/Crl.A.No.228 of 2019 and PW15 in S.C.No.185 of 2016/Crl.A.No.229 of 2019, had deposed that Rajakumari had come down to Chennai and she had identified the bodies, and he accompanied the said Rajakumari to the police station and had



translated her statement to the investigating officer who had recorded her statement. The evidence of the said Vilvijayan [PW15/PW17], at best establishes that a statement was made by the said Rajakumari to the investigating officer. This evidence cannot be taken as proof of the fact that the bodies were identified by the said Rajakumari. For the reasons best known to the prosecution, the said Rajakumari was not examined during trial in both cases. The prosecution, thus, has not established the identity of the deceased by any evidence. The prosecution had not taken any steps to prove the identification by any scientific method including the conduct of a DNA test.

13. The other evidence relied upon by the prosecution also does not establish the identity of the deceased in any manner or as regards the involvement of the appellants in the alleged murder. It is the case of the prosecution that a TATA Sumo car was seized on the confession of A2 and that the said car was involved in the occurrence. It is the admitted case that both the accused were intercepted while they were going in the TATA Sumo car and therefore, the seizure of the TATA Sumo car on the



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confession of A2 cannot be said to be a discovery of fact. Therefore, no reliance can be placed on such a seizure. It is not relevant evidence under Section 27 of the Indian Evidence Act.

14. It is the evidence of Village Administrative Officer-PW1 in S.C.No.185 of 2017 (Crl.A.No.229 of 2019) that when he went to the place where the body was found, he saw a syringe with the needle. Therefore, the seizure by the police subsequently is also not pursuant to any confession. The trial Court had relied upon some portions of the confession given to the police officer, which were marked and read as follows:

“என்னை அழைத்து சென்றால் மனோஜ் மற்றும் பிம்சிங் கொலை செய்து எரித்த இடத்தை அடையாளம் காட்டி அவர்களிடம் இருந்த எடுத்த பணம் ரூ.8000/- மற்றும் இரண்டு ஏ.டி.எம் கார்டுகளை என் விட்டு தாழ்வாரத்தில் மறைத்து வைத்திருப்பதை எடுத்து ஆஜர்செய்கிறேன்.”

15. From the above confession, the recovery of Rs.8,000/- and two ATM cards, would amount to a discovery of fact that the accused was in the possession of Rs.8,000/- [M.O.6] and two ATM cards, which were marked



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as M.O.4 and M.O.5. The prosecution has not established that the two ATM cards belonged to the deceased. Therefore, the recovery of these articles and the cash would not be of any significance. That apart, the place where the body was found was already known to the police and therefore, the above statement made by the accused in the confession did not lead to any discovery of fact to be admissible under Section 27 of the Indian Evidence Act. Further, the words 'மனோஜ் மற்றும் பிம்சிங் கொலை செய்து ஈரித்த' in any case, ought not to have been marked and that statement, which is a confession, is inadmissible.

16. As regards the fact that the deceased were staying in the lodge and A1 had picked them up from the lodge, the prosecution had relied upon the evidence of the lodge employee and its owner and had marked the lodge registers. It had also examined the handwriting expert to show that the handwriting found in the arrival and departure registers in the lodge [Q1 and Q2], tallied with the handwriting found in the pocket diary [Ex.P2] seized on the confession of A2. However, in the cross-examination of the lodge owner, who was examined in both the cases, he had admitted as



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follows:

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“ரிஜிஸ்டரில் பீம்சிங் விலாசம் உட்பட 12 பக்கங்கள் கழித்து மீண்டும் ஒட்டப்பட்டு உள்ளது என்றால் சரிதான். ரிஜிஸ்டரில் கடைசி பக்கம் ஒரு முடிவில்லாமல் தான் இருக்கிறது என்றால் சரிதான். ரிஜிஸ்டரில் வழக்கமாக ஒட்டப்பட்டிருக்கும் துணியை போல் கடைசி பக்கத்தில் துணி ஒட்டவில்லை என்றால் சரிதான்.”

The above evidence suggests that there is manipulation in the register and therefore, it is not safe to place reliance on the said register and the entries made therein.

17. The other circumstance relied upon by the prosecution is the calls made by A1 and A2 to two mobile numbers, which were in the name of the said Rajakumari, wife of D1. The prosecution relied on the CDR details. However, the said document was not accompanied by the Section 65-B, Indian Evidence Act, certificate. But we also note that no objection relating to the absence of the Section 65 – B certificate was raised by the defence for marking the document containing the CDR details. Even if we were to accept the evidence of the nodal officers that calls were made from these two mobile numbers of the accused to the mobile numbers in the name of



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D1's wife, we are of the view that in the absence of any other link in the chain of circumstances, it would hardly be of any consequence.

18. The evidence of the pesticide shop owner and the medical shop owner to show that pesticide and the syringe were sold to the accused would also not be of any use to the prosecution. One Sampath, the pesticide shop owner examined as PW5 in the case leading to Crl.A.No.228 of 2019 and as PW4 in the case leading to Crl.A.No.229 of 2019, would state that the accused were not known to him. They had bought pesticide on 12.10.2015. He had not given any bills. He could not produce any bill for the sale of pesticide, although he would admit in the cross-examination that he is bound to sell pesticide only under a bill, and his explanation that even before he could hand over the bill, the accused ran away is in our view, artificial. In any case, he was examined by the prosecution on 26.11.2018 before, the trial Court. There was no Test Identification Parade conducted to identify the accused. Similarly, the purchase of a syringe spoken to by one Sivalingam, examined as PW10 in Crl.A.No.228 of 2019 and PW3 in Crl.A.No.229 of 2019 also does not inspire confidence. He would also state



that before he could prepare the bill, the accused purchased it and ran away.

The investigating officer did not conduct any Test Identification Parade to ascertain if the accused had really approached this witness for the purchase of a syringe. Therefore, the first-time Identification in Court by both the above witnesses would be worthless. Further, the evidence of both of the witnesses is parrot like in nature and artificial. No documents were produced by these witnesses evidencing the purchase made by the accused.

19. The prosecution has not established the identity of the deceased by examining the wife of D1, who, according to the prosecution, identified the deceased during the investigation. It is well settled in all cases, the identification of the deceased by his/her relatives or by known persons is not required. Like any other fact, the identity of the deceased can also be established by other circumstances, including by scientific methods. Unfortunately, in this case, as stated earlier, no such method was also adopted.



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20. The Additional Public Prosecutor submitted that in some cases, even if the body of the deceased is not recovered, if other evidence is available to prove the murder and the involvement of the accused, the accused can be convicted. There cannot be any doubt about that proposition. “*Corpus Delicti*” means the body of the crime. Every offence has its “*Corpus Delicti*.” Thus, for instance, in a theft case, before convicting a person for theft, the “*Corpus Delicti*” namely that a theft took place, must be established, and thereafter, the involvement of the accused has to be established. Of course, in some cases, both of the above aspects would be merged and proof of one aspect would be proof of the other. “*Corpus Delicti*” in a murder case, is often confused with the dead body. “*Corpus Delicti*” in a murder case is proof of the fact that a person has been murdered. This has to be established first before proving the involvement of the accused facing the charge of murder. It is also well settled that even if the dead body is not traced/recovered, if the prosecution is able to establish that there was a homicidal death, then the “*Corpus Delicti*” is established.



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21. However, in the instant cases, the issue involved is different. The bodies of two individuals have been recovered and it is also proved by the prosecution through the doctors who conducted the post-mortem on both the deceased that both the deceased had suffered a homicidal death. However, unless the identity of the deceased is established, the other circumstances, even assuming that it is established, would be irrelevant. Unfortunately in this case, the prosecution, for reasons best known to them, has not examined the wife of the deceased, namely Rajakumari, who would be the best person to prove the identity of the deceased. The alleged identification of the deceased during the investigation would not be proof of their identity. The trial Court has also relied upon Section 161 Cr.P.C., statement of another witness by the name of Settammal and also had extracted her Section 161 Cr.P.C., statement in the Judgment to show that the accused were found in a TATA Sumo vehicle near the scene of the occurrence.



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22. To err is human. We are also sometimes prone to error of judgment. However, one cannot commit this type of error. Time and again, we have been reminding the trial Courts that such fundamental errors in law, have to be avoided. The trial Court had not only placed reliance on the Section 161 Cr.P.C., statements but also on other inadmissible materials.

23. We are therefore of the view that the prosecution has failed to establish the identity of the deceased and the involvement of the appellants in any manner, even with regard to the two bodies found by the concerned Village Administrative Officers. It is well settled that the circumstances concerned '*must or should*' be established and not '*may be*' established to hold the accused guilty of the offence. In this regard, it would be useful to refer to the following observations of the Hon'ble Supreme Court in ***Kamal v. State (NCT of Delhi)***, reported in ***2023 SCC OnLine SC 933***.

“18. It can thus be seen that this Court has held



that the circumstances from which the conclusion of guilt is to be drawn should be fully established. It has been held that the circumstances concerned “must or should” and not “may be” established. It has been held that there is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved”. It has been held that 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. It has been held that the circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the one sought to be proved, and that there must be a chain of evidence so complete so 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.”

24. In the result,

(a) **The Criminal Appeals are allowed** and the conviction and sentence imposed upon the appellants/accused vide judgments in S.C.Nos.185 & 186 of 2017 dated 30.01.2019 on the file of the learned Additional District and Sessions Judge, FTC, Vellore, are set aside. The



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appellants/A1 and A2 are acquitted of all charges in both Sessions cases and directed to be released forthwith, unless their presence is required in connection with any other case. The fine amounts, if any, paid by the appellants shall be refunded. Bail bonds, if any, executed shall stand discharged.

(M.S.R.,J.) (S.M.,J.)
24.07.2024

Index : yes/no
Speaking /Non-speaking order
Neutral citation : yes/no
ars/dk

To

1. The II Additional Sessions Judge,
Chennai.

2. The Inspector of Police,
E-3 Teynampet Police Station,
Chennai.

3. The Superintendent,
Central Prison, Puzhal, Chennai

4. The Public Prosecutor,
High Court, Madras.



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Crl.A.Nos. 228 and 229 of 2019

M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

ars

Common judgment in
Crl.A.Nos.228 and 229 of 2019

24.07.2024