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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.08.2024

Delivered on : 28.10.2024

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HON'BLE MR.JUSTICE K.RAJASEKAR

Crl.A.(MD) Nos.305, 306, 344 of 2021,
723 and 792 of 2023

Thangapandiyan	Appellant in Crl.A.(MD)No.305/2021
Vinoth	Appellant in Crl.A.(MD)No.306/2021
Ranjan	Appellant in Crl.A.(MD)No.344/2021
Balaji	Appellant in Crl.A.(MD)No.723/2023
Hari @ Hariharan	Appellant in Crl.A.(MD)No.792/2023

vs.

The State, rep. by
The Inspector of Police,
Kumbakonam East Police Station,
Thanjavur District.
(Crime No.48 of 2020)

Respondent in all the appeals



Criminal Appeals filed under Section 374(2) Cr.P.C. to call for records pertaining to the Judgment dated 22.04.2021 rendered by the Additional District and Sessions Judge (Fast Track Court), Kumbakonam in S.C.No.66 of 2020.

For Appellant in Crl.A.(MD)
No.305/2021 : Mr.G.Karnan

For Appellant in Crl.A.(MD)
No.306/2021 : Mr.G.Rupert J.Barnabas

For Appellant in Crl.A.(MD)
No.344/2021 : Mr.M.Jagadeesh Pandian

For Appellant in Crl.A.(MD)
Nos.723 & 792/2023 : Mr.A.Arunprasad

For Respondent
in all Appeals : Mr.A.Thiruvadikumar,
Additional Public Prosecutor

COMMON JUDGMENT

A.D.JAGADISH CHANDIRA, J.

Challenging the judgment of conviction and sentence rendered by the Additional District and Sessions Judge (Fast Track Court), Kumbakonam in S.C.No.66 of 2020, A1, A4, A2, A5 and A3 respectively have come up with the present Criminal Appeals.



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2. The details of conviction and sentence in respect of each appellant are as under:-

Appellant	Legal provision	Sentence imposed
A1 to A5	Section 450 IPC	10 years Rigorous Imprisonment
	Section 342 IPC	1 year Rigorous Imprisonment
	Section 396 IPC	Life Imprisonment
Ranjan-A2 (CrI.A.(MD) No. 344/2021 and Vinoth-A4 (CrI.A.(MD) No. 306/2021	Section 352 IPC	Three months imprisonment
All the sentences were ordered to be served concurrently.		

3. The case of the prosecution elicited from the evidence of the prosecution witnesses and the documentary evidence produced is as under:-

i) A complaint, Ex.P1 came to be lodged by one Vijaya, PW1, wife of Ramanathan (deceased) with the Kumbakonam East Police Station on 15.3.2020 at about 8.00 pm contending as under:-

The complainant is a resident of Kumbakonam Pudhupalam



Kaveri Karai Street alongwith her husband. Their marriage took place about 36 years ago and they have one son and one daughter. Their son by name Prabhu had committed suicide in the year 2005 itself. Their daughter Saranya was given in marriage in the year 2013 to one Govindaraj, cousin's son of PW1 and they have one child. The husband of PW1 was running a shop at Periyakadai Street in the name of ARD Vijaya Traders dealing with cattle feed. Their son-in-law Govindaraj was assisting the deceased leaving his wife and daughter at the matrimonial home and he used to visit them once in ten days. Whiles, for attending a function by name "Colour Kanavu" at Madurai, conducted by Gold Winner Company on 14.3.2020, PW1, alongwith her son-in-law, had departed on 13.3.2020 afternoon from Kumbakonam and after staying at Manachanallur in the house of son-in-law on that night, they all had attended the function at Madurai on 14.3.2020 and similarly, while returning, they had stayed at night at Manachanallur. Then, on 15.3.2020, at about 9.00 am, PW1 alone had departed from Manachanallur and on reaching Kumbakonam Mottai Gopuram at about 1.00 pm, she had called the deceased over mobile phone and on being picked up by her husband in a Scooty-two wheeler, she had returned her home. Then, PW1 and her husband, the deceased had their lunch, which had been provided by one of their relatives



who lives in the neighbouring house and had a little nap. At about 5.00 pm, the deceased woke up, had a bath and after having a coffee provided by PW1, they both had been watching the television. Whiles, at about 7.00 pm, the calling bell rang and on hearing the door bell sound, the deceased opened the door. By then, two persons had entered into the house claiming that they had come to give an invitation and sought for a plate for presenting the invitation and accordingly, PW1 had given a plate to them. By pretending that they are are preparing to present the invitation, one of them had closed the doors of the house. While their act was being questioned by PW1, three more persons had entered into the house and by surrounding her, demanded for money and jewels. When questioned by PW1, two of them had beaten her and asked her to show the iron bureau and to open it. By that time, other three persons took the husband of PW1 into a room while the others had confined her in another room by tying up her hands, legs and mouth using a lungi cloth by tearing it. When she craved for sympathy, one of them had suggested for leaving her. Then, on opening the bureau, since they found nothing valuable, they snatched the two bangles and one ring worn by PW1. By that time, she had a scream and thereby, she rushed out of the room and noticed four persons stabbing her husband, who was tied in a plastic



chair, and running away. PW1, raising hue and cry, opened the back door and called one Sathyabama. When all the family members of Sathyabama had arrived, the husband of PW1 was found with a stab injury on his throat, oozing of blood and the head was hanging down. When checked, he was found to have died. Immediately, all had raised alarm and thereby, many neighbours had gathered at the spot. Craving action against the five accused for having committed dacoity and murder, the complaint had been filed.

ii) One Mr. Jayabal, Sub-Inspector of Police, Kumbakonam East Police Station, who received the complaint, Ex.P1 at 8.00 pm on 15.3.2020, had registered the FIR, Ex.P15 in Crime No.48/2020 under Sections 452, 352, 342, 397 and 302 IPC and sent the same to Judicial Magistrate I, Kumbakonam on 16.3.2020 at about 10.15 am and copies of the same to his superiors through one Arulselvan, Grade I Constable and also a copy to the Inspector of Police for further action.

iii) Thiru.Rameshkumar, PW19, who was serving as Inspector of Police, Kumbakonam East Police Station at the relevant point of time, took up the investigation of the case and visited the scene of occurrence at 9.00 pm, prepared the observation mahazar, Ex.P45 and drew rough sketch, Ex.P46 in the presence of PW1 and the witnesses, Senthilnathan(PW9) and Subbaian in respect of the area



in front of the house of PW1 and also prepared observation mahazar, Ex.P47 and drew rough sketch, Ex.P48 in respect of the area inside the house of PW1 at about 9.30 pm. On the same day, at about 10.15 pm, PW19 had collected a piece of bloodstained cement mortar and a piece of cement mortar without bloodstains, a bloodstained red-black and pale- pink striped and bedsheet, a bloodstained black colour striped towel, a bloodstained white plastic chair, a white and violet colour striped towel, a blue-green-white colour lungi, a broken spectacles under seizure mahazar, Ex.P49 in the presence of witnesses Senthilnathan and Subbaian, enquired them and recorded their statements. PW19 also enquired PW1 and recorded her statement. Further, PW19 had conducted inquest on the dead body between 11.45 pm on 15.3.2020 and 1.45 am on 16.3.2020 in the presence of Panchayatdars Ganesan, Aravind, Sakthivel, Sureshkumar, Kadhivel and prepared the inquest report, Ex.P50. Thereafter, at about 1.50 am, he sent the dead body to the Government Hospital, Kumbakonam for post mortem through one Balasubramanian, Head Constable. Further, on the same day, PW19 had enquired the witnesses Sathyabama, Rajamanickam, Abshika, Nandakumar, Govindaraj, Saranya, Chandra, Selvam, Kandan, Kalaiyarasan, Thirunavukkarasu and recorded their statements. On the same day, he had enquired the witness Arulselvam, who



undertook the speed post work and recorded his statement. PW19 had also enquired the Sub Inspector of Police, Jayabal, who received the complaint from PW1 and recorded his statement. Further, PW19 had sent the material objects recovered from the scene of occurrence to the court under Form 95, Ex.P51. PW19 had collected the Report from Finger Print Expert.

iv) On 20.3.2020, PW19 had enquired the Head Constable Balasubramanian, who took the dead body for post mortem and took the internal organs to Forensic Sciences Laboratory and recorded his statement. Then, during an interception at 5.30 am on 16.7.2020 at Kumbakonam Paalakarai Junction, when a Hero Splender+ bearing registration No.TN-68-X-5254 was stopped and on enquiry, the rider and the pillion rider had introduced themselves as Thangapandian and Hariharan respectively and similarly, when another two wheeler Passion Pro (Black Colour) with registration number TN-68-H-6384 was stopped and on enquiry, the rider and two pillion riders had introduced themselves as Ranjan, Vinodh and Balaji. Since they had come out with contradictory versions, they were arrested and in the presence of Surendrakumar, VAO Kallipuliyur and Sirajudeen, VAO, the voluntary confession statements given by them were recorded in the presence of the same witnesses.



v) As per the confession statement given by Thangapandian, a white colour Redmi Cellphone, a Black colour Android Cellphone, two sim cards, two gold bangles weighing 32 grams, a ring weighing 4 grams and a blue colour Hero Splender motorcycle bearing registration No.TN 68x 5254 were recovered from him in the presence of the same witnesses under recovery mahazar, Ex.P52.

vi) Similarly, as per the confession statement given by Hariharan, a black colour Android Cellphone, M.O.20 and a sim card were recovered from him in the presence of the same witnesses under recovery mahazar, Ex.P53.

vii) As per the confession statement given by Ranjan, a silver colour Vivo cellphone, M.O.21 a sim card, a grey colour Red mi cell phone a 2000/- rupee note and two 500/- rupee notes were recovered from him in the presence of the same witnesses under recovery mahazar, Ex.P54. The currency notes so recovered were deposited in bank as evidenced by Ex.P55.

viii) As per the confession statement recorded from Vinodh, a samsung gold colour cell phone, a sim card and a black colour Passion Pro motorcycle bearing registration No.TN-68-H-6384, M.O. 23 were recovered from him in the presence of the same witnesses under recovery mahazar Ex.P56.

ix) As per the confession statement recorded from Balaji, a



pale blue colour in flex cell phone and a sim card were recovered from him in the presence of the same witnesses under recovery mahazar, Ex.P57.

x) Thereafter, on the assurance given by the accused Thangapandian to hand over the weapons used for the offence in the admissible portion of his confession statement, Ex.P58, he was taken to his house at Alvankovil Street, wherefrom, he took out the weapons kept hidden in the lower edge of the roof viz., a 33 cm length knife, whose rubber/plastic handle was about 13 cms and metal portion was about 20 cms, a 27 cm length knife, whose rubber/plastic handle was about 12 cms and metal portion was about 15 cms and a 22 cm length knife, whose rubber/plastic handle was about 10 cms and metal portion was about 12 cms and produced, which were recovered in the presence of witnesses Surendrakumar and Sirajudeen under recovery mahazar, Ex.P59.

xi) Thereafter, PW19 had taken all the accused to the police station and after completing the procedures, sent them for judicial remand. Then, he had enquired the witnesses Surendrakumar and Sirajudeen and recorded their statements. He sent the material objects along with Form 95, marked as Ex.P60 to the court.

xii) On 17.7.2020, PW19 had given requisition to the Chief Judicial Magistrate, Kumbakonam for conducting an identification



parade before the Judicial Magistrate. Subsequently, PW19 had given requisition to the Special Wing of Superintendent of Police for acquiring the call details from the Nodal Officers of the Network companies for the period from 1.3.2020 to 31.3.2020 and address in respect of mobile numbers used by all the accused, the deceased and the witness Selvam.

xiii) On 22.7.2020, PW19 had sent a requisition to the Judicial Magistrate, Kumbakonam seeking a direction to the Finger Print Laboratory to analyse the finger print samples collected on 15.3.2020 alongwith the finger print samples collected from the accused and furnish a report. On receipt of the direction from the Judicial Magistrate, PW19 had sent the same to the Laboratory through one Arul, Grade I Constable.

xiv) On the same day viz., on 22.7.2020, after the victim had identified the accused before Judicial Magistrate II, Kumbakonam in the Prison at Kumbakonam, PW19 had once again enquired the accused and recorded their statements.

xv) On 23.7.2020, PW19 had enquired the witness Kandhan and recorded his statement. On 27.7.2020, he had procured the identification parade report by making a requisition to Judicial Magistrate II, Kumbakonam. Since the Judicial Magistrate, in whose presence, the identification parade was conducted, had reported to



have been affected with corona as evidenced by the letter, Ex.P61 sent to court by Judicial Magistrate II, (incharge of Judicial Magistrate) and the Corona Test Report, Ex.P62, the identification parade report sent by him was marked as Ex.P63.

xvi) On 28.7.2020, PW19 had enquired one Gayathri, the Assistant Director of Regional Scientific Laboratory, who had issued the Chemical Analysis Report and recorded her statement. On the same day, he had enquired Dr.Sumithra, who conducted post mortem and recorded her statement.

xvii) On 13.8.2020, PW19 had enquired one Josephraj, Nodal Officer of Bharat Airtel Limited and one Chandramouli, Nodal Officer of Reliance Jio and recorded their statements. On 2.10.2020, he had enquired the Finger Print Expert, who had compared the finger print samples collected from the scene of occurrence and that of the accused and recorded his statement. On 3.10.2020, he had enquired one Karthik, Nodal Officer of Vodafone Idea Limited and recorded his statement.

xviii) On completion of investigation, PW19 had filed the final report against the accused under Sections 450, 342, 352, 396 read with Section 34 IPC.

4. The case was taken on file by Judicial Magistrate I,



Kumbakonam in P.R.C.No.30 of 2020. On summoning, the Appellants/accused appeared. Copies of relevant papers were furnished to the Appellants/accused under Section 207 of Cr.P.C. and the case was committed for trial to the Principal District and Sessions Judge, Thanjavur under section 209 Cr.P.C and in turn, the case was made over by the Principal District and Sessions Judge, Thanjavur to the Additional District and Sessions Judge (Fast Track Court), Kumbakonam.

5. On appearance of the accused and upon perusing the records and upon hearing the arguments of both sides, charges were framed against the 1st and 3rd accused u/s. 450, 342, 396 IPC., against the 2nd and 4th accused u/s. 450, 342, 352, 396 IPC., against the 5th accused u/s. 450, 342, 396 r/w. 34 IPC. The accused had pleaded not guilty and sought to be tried.

6. In order to bring home the charges against the accused, the prosecution examined P.W.1 to P.W.19 as their witnesses and marked Ex.P.1 to Ex.P.69 as exhibits and Material Objects 1 to 23 were marked.

7. On completion of the evidence, the appellant/accused were questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses and



the accused had stated that they had been falsely implicated in the case. On the side of the 4th accused, one Muruganandham, Editor of the Dinakaran Daily, Trichy Edition was examined as DW1 and the Dinakaran Daily dated 18.07.2020 was marked as Ex.D1.

8. The Trial Court, on considering the entire materials, found the accused/appellant guilty and imposed punishments, as referred to above, which is under challenge in the present Criminal Appeals.

9. Heard the learned counsel Mr.G.Karnan for CrI.A.(MD)No. 305/2021, Mr.G.Rupert J.Barnabas for CrI.A.(MD)No.306/2021, Mr.M.Jagadeesh Pandian for CrI.A.(MD)No.344/2021 and Mr.A.Arunprasad for CrI.A.(MD)Nos.723 and 792/2023 at length. The crux of their submissions are as under:-

i) The Trial Court has erred in convicting the appellants by relying on the improbable evidence of PW1 and without considering the evidence of DW1 and Ex.D1.

ii) Though it is the specific case of the prosecution as seen from the evidence of PW1 and the contention in the written complaint, Ex.P1 that she was beaten by the accused and tied up, no injury nor any contusion was reported to have been sustained by PW1. Further, there are many contradictions between the version of



PW1 in her evidence and her contention in the complaint and she has also not described anything about the physical appearance of the accused neither in her complaint nor in her evidence, however, such contradictions have been ignored by the Trial Court.

iii) The Trial Court has erred in ignoring the fact that there was an unexplained delay of 15 hours in the FIR reaching the court, which is only 4 kms away from the police station, which assumes more significance when there is an interpolation in the complaint, Ex.P1 with regard to the date and time of occurrence, especially, when it is the evidence of PW1, complainant that it was written and signed by herself in the police station. All such contradictions would go to the root of the prosecution case.

iv) Further, when it is the specific allegation of PW1 in her complaint that her two bangles and one ring were snatched by the accused and it is also the specific case of the prosecution that A4-Vinoth had taken the two Redmi mobile phones and one Nokia mobile phone available on the sofa while running away from the scene of occurrence, in column 9 of the FIR meant for disclosing the particulars of the properties stolen, nothing has been mentioned, however, the same has not been properly appreciated by the Trial Court. Similarly, column 3(c) provided for entering General Diary Reference is left blank, which has also not been properly



appreciated by the Trial Court.

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v) The Trial Court has erred in convicting the appellants, on the basis of test identification parade when it was conducted only on 22.7.2020 after the news was published on 18.7.2020 with the images of the appellants with regard to their arrest on 16.7.2020 for the occurrence that had taken place on 15.3.2020, especially when the Judicial Magistrate, in whose presence the identification parade was conducted, has not been examined.

vi) The Trial Court has wrongly placed reliance on the evidence of PW7, a worker of the deceased to arrive at a conclusion with regard to the presence of PW1 at the scene of occurrence and failed to consider that the arrest, confession and recovery are unnatural and the evidence of PW10, a witness for arrest and recovery is not in the manner known to law.

vii) The Trial Judge failed to consider that the manner of accused entering into the premises of the deceased has not been properly explained and the prosecution witnesses have come out with contradicting versions. Further, the post mortem report, Ex.P16 reveals that the jugular vein of the deceased was cut and the cause of death is shock and haemorrhage due to the injury to vital organs such as great vessels of neck and trachea. When such a grievous injury is reported to have been sustained by the deceased, non



recovery of the dress worn by the deceased and PW1 creates much doubt about the prosecution case.

viii) The Trial Court has wrongly placed reliance on the Finger Print Expert Reports, Ex.P31 and Ex.P35 for convicting the accused ignoring the evidence of PW17, the Finger Print Expert and the admission made by PW19, during his cross examination that the finger prints taken from the scene of occurrence did not match with any finger prints available in the crime records.

ix) The Trial Judge ought to have disbelieved the evidence of PW15, PW16 and PW18, Nodal Officers of the Mobile Network Companies as their versions do not satisfy the conditions stipulated under Section 65-B(4) of Indian Evidence Act.

x) While the prosecution has not proved its case beyond all reasonable doubts, the Trial Judge erred in convicting the appellants/accused by rejecting the defence without even considering the evidence adduced on their side and thereby, the judgment of conviction and sentence is liable to be set aside and the appeals may be allowed.

10. Per contra, Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the State would submit his arguments as under:-



i) The prosecution has proved its case beyond all reasonable doubts with the cogent evidence adduced by the prosecution witnesses.

ii) Despite that some minor contradictions have been pointed out by the appellants, which do not have much significance, there is solitary evidence adduced by PW1, a credible witness. Any omission on the part of the investigating officer cannot go against the prosecution.

iii) The recovery made from the accused based on the admissible portion of their voluntary confession statements, the CDR details produced by PW15, PW16 and PW18, Report given by the Finger Print Expert, the test identification parade report would go to show that the prosecution has clearly proved its case.

iv) There cannot be any suspicion about the presence of PW1 at the scene of occurrence in view of the evidence adduced by PW5, Ambulance Emergency Technician, an independent witness.

v) The investigating officer has explained with regard to the delay in FIR reaching the court and thereby, it does not vitiate the case of the prosecution.

vi) Though an interpolation in the FIR has been pointed out by the appellants, they have not initiated to put even a single question to the Sub Inspector of Police, who had prepared the FIR.



vii) The Trial Court, after considering the entire materials, has found the accused guilty of the charges levelled against them and thereby, the judgment of conviction rendered by the Trial Court does not warrant any interference and the Criminal Appeals are liable to be dismissed.

11. Heard the learned counsel appearing for the parties and perused the materials available on record.

12. It is a case of dacoity and murder. The case of the prosecution is that PW1, who is the wife of the deceased Ramanathan, is the sole eyewitness for the occurrence. On her making hue and cry after the accused ran away from the scene of occurrence, PW1 claims to have come out and sought for assistance from PW2, step brother of the deceased Ramanathan, who is a neighbouring resident and thereupon, PW2 and his wife had rushed to the scene of occurrence, and only thereafter, other neighbours had gathered there. Therefore, it is clear that PW1 alone claims to have been at the scene of occurrence exactly at the time of commission of offence.

13. A perusal of the judgment rendered by the Trial Court



reveals that merely by reproducing the evidence of the prosecution witnesses, the Trial Court had ventured to believe the version of PW1, who is claimed to be the sole eyewitness, with regard to her presence at the scene of occurrence and witnessing the occurrence, ignoring the very many contradictions in her version as PW1 when compared with that in her complaint, pointed out by the defence and also the fact that the other prosecution witnesses had entered the scene of occurrence only on receipt of information from PW1 or other witnesses and their version do not have independent legs to stand.

14. PW1 alone being claimed to be the sole eyewitness for the occurrence, before ever going into other aspects, it would be appropriate if the reliability of her evidence is analysed with due care and caution to arrive at a conclusion as to whether the prosecution has proved its case beyond all reasonable doubts, especially, when it is the case of the appellants that there are many contradictions in the version of the the sole eyewitness when compared with her version in the written complaint, Ex.P1 and they raise a doubt about the presence of PW1 herself at the scene of occurrence when the occurrence had taken place and her claim of witnessing the occurrence.



15. In this regard, it would be relevant to see that a Division Bench of the Apex Court has held in **Lallu Manjhi v. State of Jharkhand**, (2003) 2 SCC 401 as under:-

"10. The law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the court may classify the oral testimony into three categories, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon the testimony of a single witness. (See:Vadivelu Thevar v. State of Madras [AIR 1957 SC 614 : 1957 Cri LJ 1000].)"

16. Another Division Bench of the Apex Court in **Ramnaresh**



v. State of Chhattisgarh, (2012) 4 SCC 257 has held as under:-

"24. Now, we may deal with the first contention raised on behalf of the appellants with reference to the credibility of the testimony of PW 6. The learned counsel appearing for the appellants, contended that PW 6, the sole eyewitness, cannot be relied upon to convict the accused for the reason that the witness, being a suspect himself, is not credible and has not spoken the truth before the court. It is also contended that the court should deal with the statement of a sole eyewitness cautiously and it may not be very safe to rely upon the testimony of such a witness. In support of his contention, he derives strength from the judgments of this Court in Joseph v. State of Kerala [(2003) 1 SCC 465 : 2003 SCC (Cri) 356] and State of Haryana v. Inder Singh [(2002) 9 SCC 537 : 2003 SCC (Cri) 1239].

25. *In Joseph [(2003) 1 SCC 465 : 2003 SCC (Cri) 356] this Court has stated the principle that where there is a sole witness to the incident, his evidence has to be accepted with an amount of caution and after testing it on the touchstone of evidence*



tendered by other witnesses or the material evidence placed on record. This Court further stated that Section 134 of the Evidence Act does not provide for any particular number of witnesses and it would be permissible for the Court to record and sustain a conviction on the evidence of a solitary eyewitness. But, at the same time, such a course can be adopted only if evidence tendered by such a witness is credible, reliable, in tune with the case of the prosecution and inspires implicit confidence.

26. In *Inder Singh* (2002) 9 SCC 537 : 2003 SCC (Cri) 1239] the Court held that (SCC p. 538, para 5) it is not the quantity but the quality of the witnesses which matters for determining the guilt or innocence of the accused. The testimony of a sole witness must be confidence-inspiring and beyond suspicion, thus, leaving no doubt in the mind of the Court.

27. The principles stated in these judgments are indisputable. None of these judgments say that the testimony of the sole eyewitness cannot be relied upon or conviction of an accused cannot be based upon the statement of the sole eyewitness to the



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crime. All that is needed is that the statement of the sole eyewitness should be reliable, should not leave any doubt in the mind of the court and has to be corroborated by other evidence produced by the prosecution in relation to commission of the crime and involvement of the accused in committing such a crime."

17. In the light of the above decisions, this court feels that a conjoint analysis of the evidence of PW1 and her version in her written complaint, Ex.P1 in the light of other materials available on record would throw some light on the issue.

18. The written complaint, Ex.P1 being the foremost version of the prosecution case, when the contents of the complaint are compared with the evidence adduced by PW1, this court is able to find out many contradictions as pointed out by the learned counsel for the appellants. Of course, the complaint is not an encyclopedia. However, drastic contradictions and improvements in the evidence of the complainant cannot be entertained, especially, when the complainant happens to be the sole eyewitness for the occurrence. When the complainant had chosen to narrate the occurrence in a



written complaint which runs about three pages with the description of her entire family in a chronological manner, it is surprise to note that she has not whispered anything about the physical appearance of the accused in her complaint. Such a lapse on the part of the complainant, PW1 raises doubt with regard to the accuracy of her identifying the accused in the identification parade, especially, when the Magistrate, in whose presence the identification parade was claimed to have been conducted, has not been examined in court and it is the admitted case of the prosecution that the news article with the faces of the accused was published in the Dinakaran Daily on 18.7.2020 as evident from Ex.D1 and the evidence of its Editor, Trichy Edition as DW1, immediately after the arrest of the accused, but, prior to the identification parade conducted on 22.7.2020.

19. Apart from the above lapses, so as the manner in which the identification parade was conducted, the categorical admission made by the investigating officer, PW19, when he was cross examined by A4 and A5, is that the identification report submitted by the Magistrate, in whose presence the identification parade was conducted, reveals that 12 persons were involved in the identification parade other than the accused and they were with much age difference and swapping of dresses was made in between



two accused alone and no change of dresses was effected in respect of other three accused and the 12 persons involved in the identification parade other than the accused.

20. The significance of Test Identification Parade has been dealt with by the Apex Court in **Gireesan Nair v. State of Kerala**, (2023) 1 SCC 180,

"29. TIPs belong to the stage of investigation by the police. It assures that investigation is proceeding in the right direction. It is a rule of prudence which is required to be followed in cases where the accused is not known to the witness or the complainant (Matru v. State of U.P. [Matru v. State of U.P., (1971) 2 SCC 75, para 17 : 1971 SCC (Cri) 391]; Mulla v. State of U.P. [Mulla v. State of U.P., (2010) 3 SCC 508, paras 41 & 43 : (2010) 2 SCC (Cri) 1150] and C. Muniappan v. State of T.N. [C. Muniappan v. State of T.N., (2010) 9 SCC 567, para 42 : (2010) 3 SCC (Cri) 1402]). The evidence of a TIP is admissible under Section 9 of the Evidence Act. However, it is not a substantive piece of evidence. Instead, it is used to



corroborate the evidence given by witnesses before a court of law at the time of trial. Therefore, TIPs, even if held, cannot be considered in all the cases as trustworthy evidence on which the conviction of an accused can be sustained (State of H.P. v. Lekh Raj [State of H.P. v. Lekh Raj, (2000) 1 SCC 247, para 3 : 2000 SCC (Cri) 147] and C. Muniappan v. Muniappan v. State of T.N. [C.Muniappan v. State of T.N., (2010) 9 SCC 567, para 42 : (2010) 3 SCC (Cri) 1402]).

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31. *In cases where the witnesses have had ample opportunity to see the accused before the identification parade is held, it may adversely affect the trial. It is the duty of the prosecution to establish before the court that right from the day of arrest, the accused was kept "baparda" to rule out the possibility of their face being seen while in police custody. If the witnesses had the opportunity to see the accused before the TIP, be it in any form i.e. physically, through photographs or via media (newspapers, television, etc.), the evidence of the*



TIP is not admissible as a valid piece of evidence (Lal Singh v. State of U.P. [Lal Singh v. State of U.P., (2003) 12 SCC 554 : 2004 SCC (Cri) Supp 489] and Suryamoorthi v. Govindaswamy [Suryamoorthi v. Govindaswamy, (1989) 3 SCC 24 : 1989 SCC (Cri) 472]).

.....

33. *It is significant to maintain a healthy ratio between suspects and non-suspects during a TIP. If rules to that effect are provided in Prison Manuals or if an appropriate authority has issued guidelines regarding the ratio to be maintained, then such rules/guidelines shall be followed. The officer conducting the TIP is under a compelling obligation to mandatorily maintain the prescribed ratio. While conducting a TIP, it is a sine qua non that the non-suspects should be of the same age-group and should also have similar physical features (size, weight, colour, beard, scars, marks, bodily injuries, etc.) to that of the suspects. The officer concerned overseeing the TIP should also record such physical features before commencing the TIP proceeding.*



This gives credibility to the TIP and ensures that the TIP is not just an empty formality (Rajesh Govind Jagesha v. State of Maharashtra [Rajesh Govind Jagesha v. State of Maharashtra, (1999) 8 SCC 428 : 1999 SCC (Cri) 1452] and Ravi v. State [Ravi v. State, (2007) 15 SCC 372 : (2010) 3 SCC (Cri) 730])."

21. In a recent judgment, a Division Bench of this court in **R.Vinay vs. State** (2024 (1) TLNJ 49 (Criminal)) has held as under:-

"15. Going by the admission of PW1 and PW2 and the infirmities that we have pointed out in the evidence of the learned Magistrate [PW10], it is highly unsafe to believe that PW1 and PW2 had identified the correct suspects in the TIP. Once the identification in the TIP becomes suspect, the identification of the witness in Court becomes meaningless. In this regard, we would like to refer to the observations of the Hon'ble Supreme Court in Shaik Umar Ahmed Shaikh and another Vs State of



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Maharashtra reported in 1998 (5) SCC 103, which is extracted hereunder.

"8.But, the question arises: what value could be attached to the evidence of identity of accused by the witnesses in the court when the accused were possibly shown to the witnesses before the identification parade in the police station. The Designated Court has already recorded a finding that there was strong possibility that the suspects were shown to the witnesses. Under such circumstances their identification in the court by the witnesses was meaningless.....".

16. In Ravindra Vs State of Maharashtra reported in (1998) 6 SCC 609, the Hon'ble Supreme Court has held as follows:

"8.....The identification parades belong to the investigation stage and they serve to provide the investigating authority with materials to assure themselves if the investigation is proceeding on the right lines. In other words, it is through these



identification parades that the investigating agency is required to ascertain whether the persons whom they suspect to have committed the offence were the real culprits —and not by showing the suspects or their photographs”.

17. The same view was reiterated in Krishnan Kumar Malik Vs State of Haryana reported in (2011) 7 SCC 130, wherein the Hon'ble Supreme Court has observed as follows:

“26.....Admittedly, she was already shown the appellant and the other accused at the police station after they were arrested. Thus, her dock identification in the court had become meaningless”.

18. Further, identification features were not stated. Though PW1 would state in her evidence that she informed the police about the identification features, however we find no such features in the complaint, except stating that two of the accused were tall. In this regard, our Hon'ble Supreme Court in Md.Sajjad @ Raju @ Salim Vs. State of West



Bengal, reported in (2017) 11 SCC 150, stated that where the witnesses are not known to the accused, the identification features have to be stated, without which the identification in the Test Identification Parade will lose its significance, particularly when there is a delay in the conduct of Test Identification Parade."

22. Further, a strong doubt has been raised by the appellants with regard to the case of the prosecution on the basis of an unexplained delay of 15 hours in the FIR reaching the court, which is only 4 kms away from the police station. In this regard, an analysis of sequence of events would be very much useful. It has been contended by the complainant in Ex.P1 that the accused had entered into the house of PW1 at about 7.00 pm on 15.3.2020 and wielded threat. Of course, a manipulation with regard to the said time is found in the complaint, Ex.P1, which has not been explained by the prosecution, particularly, by PW1, the complainant, when she claims to have written the complaint on her own.

23. Further, in the complaint, Ex.P1, after narrating the acts of crime committed by the accused, it has been mentioned that after the accused had run away from scene of occurrence, PW1 had



opened the rear entrance of her house and called for the assistance of Sathyabama and thereupon, the entire family members of Sathyabama had been at the house of PW1 and when they checked the deceased by untying him, they found his head was hanging down with oozing of blood from the stab injuries and they found that he was dead and on their raising hue and cry, many neighbours had gathered there and immediately thereafter, PW1 had rushed to the Kumbakonam East Police Station and lodged the complaint.

24. Whereas it is the specific and categorical evidence of PW1 with regard to lodging of the complaint that after the accused had run away from the scene of occurrence after committing the offence, she had called for assistance from her brother in law, PW2 and his wife and on their arrival, they checked her husband and found that his head was hanging down and when his hands were untied, he fell down and on their raising alarm, the other neighbours had rushed to her house and suggested for calling 108 ambulance. Her further evidence is that PW2 had called for the 108 ambulance service as they were not sure as to whether PW1's husband was alive or not and the Technician, who came in the 108 ambulance service, had affirmed the death of her husband and refused to take him to the hospital suggesting to lodge a complaint with the police



and only thereupon, she had proceeded to the Kumbakonam East Police Station alongwith PW2 in an auto-rickshaw for lodging the complaint with the police. It is her further evidence that in the police station, papers were given for writing the complaint, wherein, she had written the complaint, signed and handed over to the Sub Inspector of Police, Jayabal, PW12 and came back to her house, whereupon, the police had reached at the scene of occurrence.

25. From the above, it is clear that PW1/complainant has not chosen to reveal in the complaint with regard to calling of ambulance service and their visit at the scene of occurrence prior to her rushing to the police station for the reasons best known to her.

26. Further, it is peculiar to note that during the cross examination at the instance of A2, PW1 says that she had gone to the police station at about 7.00 pm and after lodging the complaint, she had returned to her home at about 7.30 pm, which is very much improbable in view of the fact that she had not only deposed in her chief, but, also contended in her written complaint, Ex.P1 that it would be around 7.00 pm when the accused had entered into her house for committing the offence, more particularly, when she



phone lying on the sofa. When she was cross examined by A1, she had admitted that apart from the jewels snatched by the accused, she was wearing some other jewels at the time of occurrence. However, it is the case of the prosecution that the accused had taken the jewels viz., two bangles and one ring of PW1 alone, which also has not been mentioned in column 9 of the FIR meant for disclosing the particulars of the properties stolen. Similarly, it is the case of the prosecution that A4-Vinoth had taken two Redmi mobile phones and one Nokia mobile phone from the sofa while running away from the scene of occurrence. The confession statements of all the accused also contains such an action of A4-Vinoth. While PW1's attribution of the conduct of the accused raises much doubt about the case of the prosecution, the prosecution has failed to recover such mobile phones when the confession statement of A4 is specific that he had thrown away only the Nokia mobile phone out of the three mobile phones taken by him. It is peculiar to note that when the accused are attributed with the specific motive of murder for gain, they had snatched only limited jewels before assaulting her husband, when it is the specific admission of PW1 in the cross examination that she was wearing some other jewels at the time of occurrence. Further, it is seen that though the complaint had averred in the complaint and deposed in her evidence that she was



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tied up and beaten by the accused in the course of committing the offence, very peculiarly, the prosecution has not come out with the case of any injury having been sustained by the complainant/PW1.

28. While there being such material and glaring contradictions in the version of the complainant, the omission on the part of the prosecution to specify the stolen properties in column 9 of the FIR, which is meant for disclosing the particulars of the properties stolen, creates much suspicion about the case of the prosecution.

29. An overall analysis of the evidence of PW1 in her chief examination and in the cross-examination made by independent accused separately and her contention in the complaint, Ex.P1 would go to show that her entire version with regard to the occurrence is a mishmash and it would be unsafe to rely on the same to convict the accused.

30. While the appellants/accused raise about the presence of PW1 in the scene of occurrence itself, the prosecution has relied on the evidence of PW7 for affirming such fact and also the presence of the accused near the scene of occurrence.



31. PW7 happens to be a worker of the deceased Ramanathan.

He speaks about his visit at the house of the deceased Ramanathan.

Of course, he speaks about handing over the snacks to PW1 and witnessing A1 and A3 standing at the bank of cauvery while he was returning. His further evidence is that after his return, he had received a phone call at about 8.00 pm from PW4, Govindarajan, son-in-law of the deceased giving information about the dacoity having been committed at the house of the deceased Ramanathan and thereby, he went to the house of the deceased Ramanathan, where, he claims to have seen 108 Ambulance and a group of police personnel and he came to know that Ramanathan was murdered.

32. Though PW7 is claimed to be an independent witness by the prosecution to affirm the presence of PW1 at the scene of occurrence when the crime was committed and also the presence of A1 and A3 near the scene of occurrence, he, being an employee of the deceased Ramanathan, cannot be construed as a fully independent witness. During the cross examination at the instance of A1, his admission is that prior to his witnessing A1 and A3 near the bank of cauvery on the date of occurrence, he had never seen them. Therefore, a single statement made by PW7 with regard to his witnessing A1 and A3 in the near locality does not gain much



credence to rely upon the same to draw an adverse inference against the appellant/accused.

33. Coming to the manner of investigation, it is seen that PW1, during her cross-examination done by A2, had admitted that after the occurrence, she had checked as to whether her husband was alive and by that time, the dress worn by her acquired bloodstains due to oozing of blood from her husband's stab injury and she went to the police station only in the same bloodstained dress, however, the police had not initiated any step for recovering the bloodstained dress worn by the deceased, which proves the manner in which the investigation was conducted and materials were collected by the prosecution. In fact, while the prosecution has chosen to produce as many as 23 material objects including the broken spectacles of the deceased and the plastic chair, where the accused was made to sit, it is seen that the investigating officer has not taken any steps to recover even the dress worn by the deceased, which, certainly, would have acquired bloodstains due to the major injury he had sustained in his jugular veins. Such a lapse on the part of the prosecution and the manner of investigation in a case of dacoity and brutal murder goes to the root of the prosecution case.



34. In a similar situation, in **Sambu @ Tamilnilavu vs.**

State (2017) 2 MLJ (Cri.) 632, a Division Bench of this court has held as under:-

"7. Though, it is stated that when P.W.1 went to the police station, he was wearing bloodstained clothes, they were not recovered and produced. Above all, the F.I.R. which is stated to be registered at 11.00 a.m. reached the hands of the learned Magistrate only at 01.30 p.m. From the above contradictions and improbabilities there arises a strong doubt about the very presence of P.W.1 at the place of occurrence.

8. At this juncture, we should state the legal position. In [Vadivelu Thevar Vs. State of Madras](#) reported in AIR 1957 SC 614 the Hon'ble Supreme Court has held that if the the solitary witness is fully believable, then, even in the absence of any corroboration from any other independent source, the said evidence can be the sole foundation for the conviction of the accused. But if the evidence of the solitary evidence is partly believable in the absence of any corroboration from any other independent



source, on material particulars, it would not be safe to act upon the said evidence of the solitary witness. In this case, the case projected by the prosecution as against the accused 4 and 5 has been rejected by the trial Court. The evidence of P.W.1 is highly doubtful as we have already discussed. Therefore, in our considered view, in the absence of corroboration from any other source on material particulars, it will not be safe to rely on the evidence of P.W.1 and sustain the conviction. We hold that the prosecution has, thus failed to prove the case against the second accused / appellant beyond reasonable doubt. Therefore, he is entitled for acquittal."

35. With regard to Finger Print Analysis done in the case, PW17, Kalaikannagi, who was serving as Deputy Superintendent of Police in the Finger Print Laboratory, Thanjavur at the relevant point of time, had deposed that four finger prints were acquired from the scene of occurrence and out of that, excluding the finger print that was identified to be that of PW1, three finger prints were photographed denoting them as K1, K2 and K3 and they were sent



alongwith the Scene of Crime Visiting Report, Ex.P31 dated 16.3.2020. Her specific evidence is that those finger prints did not match with the ones available with them in their records of old criminals and subsequently, on receipt of the sample finger prints of the accused on 22.7.2020, she had conducted analysis and gave the opinion, Ex.P35, dated 13.8.2020 contending that the finger prints taken from the scene of occurrence are identical with that of A1-Thangapandian, A2-Ranjan and A4-Vinoth while the finger prints of the other accused viz. A3-Hari @ Hariharan and A5-Balaji were not identical.

36. The evidence of PW17 that the finger prints that were taken from the scene of occurrence did not match with the ones available with their criminal records and only on analysis of the finger prints of the accused received from the court on 16.7.2020, they were found to be identical, raises much suspicion about the case of the prosecution in view of the specific admission by the investigating officer, PW19, during his cross examination at the instance of A4 and A5, that while A2 to A5 had no antecedents, there are many cases including theft cases pending against A1 and it is their practice in prevalence to obtain the finger prints of persons with such criminal antecedents for maintaining the same in



the criminal records.

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37. The suspicion with regard to the finger print analysis becomes more obvious when it has been specifically admitted by PW17 during her cross examination by A2 that whenever finger print samples were received from the courts, they would carry a certificate to show that the finger prints were taken in the presence of the Judicial Magistrate, however, in the instant case, neither such certification by way of signature of the Judicial Magistrate nor the court seal is found alongwith the finger print specimens. Further, it is seen that PW17 had issued Ex.P36 a letter in corrigendum to the court admitting her mistake in mentioning "Wooden Locker" as one of the places where chance prints were taken instead of "Steel Locker", which adds strength to such suspicion in the case of the prosecution. The Trial Court itself was not inclined to place any reliance on the evidence of PW17 and her report on the defects having been pointed out viz., she is not a qualified finger print expert, non-examination of the photographer, who captured the images of the finger prints at the scene of occurrence, the corrections in the finger print analysis report, procedural lapses on the part of the prosecution in collecting the finger prints from the accused.



38. Ultimately, it is seen that the prosecution has placed much reliance on the evidence of PWs.15, 16 and 18, Nodal Officers of the Mobile Network Companies which is not appropriate. Further, it is seen that PW18, the Senior Manager and State Nodal Officer of Reliance Jio has admitted during his cross examination at the instance of A1 and A2 that he had not furnished the SIM number in the Call Details submitted by him.

39. Considering the entire facts and circumstances of the case, this court feels that the prosecution has miserably failed to prove its case against the accused, however, the Trial Court has erred in convicting the appellants/accused without considering the above aspects and hence, it is liable to be set aside.

40. In the result, the Criminal Appeals are allowed. The judgment and conviction dated 22.04.2021 rendered by the Additional District and Sessions Judge (Fast Track Court), Kumbakonam in S.C.No.66 of 2020 is set aside. The appellants are acquitted from the charges levelled against them. Bail bond, if any executed by the Appellants, shall stand cancelled.

(A.D.J.C.,J.) (K.R.S.,J.)
28.10.2024

Index: Yes/No.
Internet: Yes/No.



ssk.

To

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1. Additional District and Sessions Judge
(Fast Track Court),
Kumbakonam.
2. The Inspector of Police,
Kumbakonam East Police Station,
Thanjavur District.
3. Public Prosecutor,
High Court, Madurai.





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A.D.JAGADISH CHANDIRA, J.
and
K.RAJASEKAR, J.

ssk.

P.D. JUDGMENT IN
Crl.A.(MD) Nos.305, 306,
344 of 2021, 723 and
792 of 2023

Delivered on
.10.2024