

Crl.A(MD)Nos.214 & 493 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 22.01.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

Crl.A(MD)Nos.214 & 493 of 2021

Crl.A(MD)No.214 of 2021:

Jam Raj

... Appellant

Vs.

1.The State represented by
The Inspector of Police,
Marthandam Police Station,
Kanyakumari District.
(Crime No.413 of 2015)

... Respondent /
Complainant

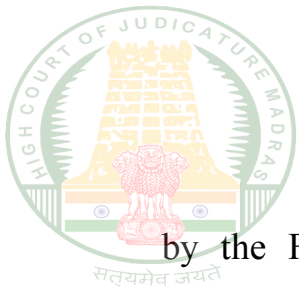
2.Nirmal Jayachandra

3.David PackiaBabu

4.Pushpa Rani

... Respondents /
Accused 1 to 3

Prayer: Criminal Appeal filed under Section 378 r/w 372 of Code of Criminal Procedure, 1973 to call for the records relating to the acquittal judgment passed



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by the Fast Track Mahila Court, Nagercoil in SC.No.203 of 2016 dated 29.01.2021 and allow the appeal and may convict the 1 and 2 Accused / Respondents person according to law.

For Appellant : Mr.S.Suresh Kumar

For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor
for R.1

Mr.Muthu Saravanan for R.2 & R.4

R.3 – Died

Crl.A(MD)No.493 of 2021:

The State represented by
The Inspector of Police,
Marthandam Police Station,
Marthandam,
Kanniyakumari District.
(Crime No.413 of 2015)

... Appellant
Complainant

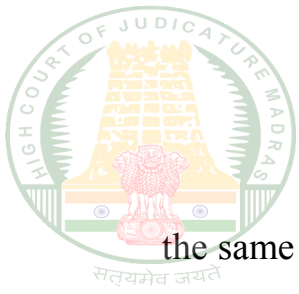
Vs.

1.Nirmal Jayachandran

2.Pushpa Rani

... Respondents

Prayer: Criminal Appeal filed under Section 378(i) of Code of Criminal Procedure, 1973 to call for the records in S.C.No.203 of 2016 dated 29.01.2021 on the file of the Sessions Judge, Mahila Fast Track Court, Nagercoil, set aside



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the same and convict the respondents / Accused [A-1 & A3] in accordance with law.

For Appellant : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

For Respondents : Mr.Muthu Saravanan

COMMON JUDGMENT

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

These appeals are directed against the judgment dated 29.01.2021 made in S.C.No.203 of 2016 on the file of Fast Track Mahila Court, Nagercoil. These appeals have been preferred both by the defacto complainant as well as the State.

2.The case of the prosecution is as follows:

Caroline Viola Bel was the daughter of the defacto complainant / Jam Raj. Her marriage with Nirmal Jayachandran / A1 was solemnized on 19.02.2007 as per Christian rites and customs. A2 and A3 are the parents of A1. Through the wedlock, two children were born. The accused subjected the deceased to cruelty and demanded additional dowry. On 20.06.2015, A2 and A3 snatched the gold chain from the deceased. At that time, the first accused hit the deceased with an iron rod. Caroline Viola Bel was rushed to Issac Hospital, Marthandam for first aid. She was thereafter shifted to Nims Hospital, Neyyattinkarai for further treatment. Caroline Viola Bel passed away on



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24.06.2015. Thereafter, Ex.P1 complaint dated 24.06.2015 was lodged by Jam

WEB GGN Raj / father of the deceased before the Inspector of Police, Marthandam Police

Station. Crime No.413 of 2015 was registered for the offences under Sections

498(A) and 302 of IPC. PW27 who was the Inspector of Police took up

investigation. He went to the occurrence spot on 25.06.2015 at around

midnight. He prepared a rough sketch Ex.P6 and observation mahazar Ex.P7.

He later examined the witnesses and recorded their statements. He sent the

body for post-mortem. He arrested A2 and A3 at around 11.00 a.m on

25.06.2015. Based on their disclosure statement, thali chain and holy cross

locket were recovered (MO2 and MO3). On 01.07.2015, A1 surrendered before

the learned Judicial Magistrate No.3, Nagercoil. Police custody was taken on

09.07.2015 at around 14.30 hrs. A1 gave confession statement in the presence

of Suresh and Rajan. Based on the disclosure statement, MO1 iron rod was

recovered under Ex.P2 mahazar. Since PW27 was transferred, PW28 continued

the investigation. Since PW28 was also transferred, PW29 continued the

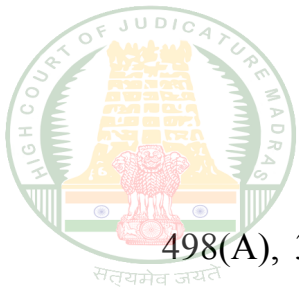
investigation and filed final report against the accused. He filed final report for

the offences under Sections 302, r/w Sec 34 IPC. The case was taken on file in

PRC.No.11 of 2016 and committed to the Principal Sessions Court, Nagercoil.

It was made over to Fast Track Mahila Court, Nagercoil in SC.No.203 of 2016.

Charges were framed against the first accused for the offences under Sections



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498(A), 302 and 201 IPC. Charges were framed against A2 and A3 for the offences under Sections 498(A), 302 r/w 34 and 201 of IPC. The second charge under Section 302 IPC was framed against A1. Third charge under Section 302 read with 34 of IPC was framed against the accused A2 and A3.

3. On the side of the prosecution, as many as 29 witnesses were examined. PW1 to PW29 were marked. ExP1 to Ex.P12 were marked. MO1 to MO3 were marked as material objects. Incriminating circumstances were put to the accused during examination under Section 313 of Cr.P.C. The accused characterised them as false. No evidence was adduced on the side of the accused. After considering the evidence on record, the Court below vide judgment dated 29.01.2021 acquitted the accused of all the charges. Even during the pendency of the trial, A2 passed away and the charges framed against him stood abated. Aggrieved by the same, the defacto complainant has filed Crl.A(MD)No.214 of 2021, State has filed Crl.A(MD)No.493 of 2021.

4. Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor appearing for the State. They submitted that the prosecution had convincingly proved the charges beyond reasonable doubt. The Court below erred grievously acquitting them. They pointed out



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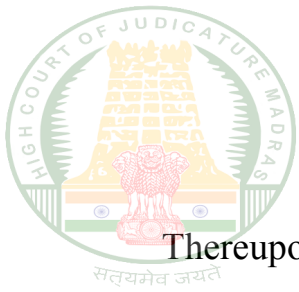
that occurrence had taken place inside the house of the accused. They invoked

Section 106 of the Evidence Act, 1872. They pointed out that the accused had a duty to explain and that they failed to discharge the burden cast on them. Our attention was drawn to the testimony of PW3 who is a child witness. The child had deposed naturally and convincingly and it could not be shaken during cross examination. They prayed to set aside the impugned judgment of the learned trial Judge and allow these appeals as prayed for.

5.Per contra, the learned counsel appearing for the accused submitted that the impugned judgment is well reasoned and that it does not call for interference.

6.We carefully considered the rival contentions and went through the evidence on record.

7.The complaint was lodged by Jam Raj / PW1 father of the deceased. Admittedly, he is not an eye-witness. PW2 mother of the deceased had been projected as one of the eye witnesses. She deposed that on 20.06.2015 (wrongly typed in the typed set), she contacted her daughter over phone. The deceased told PW2 that her husband and in-laws are planning to murder her.



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Thereupon, PW2 and her son Ragu / PW23 rushed to the house of the deceased.

When they went, A2 and A3 snatched the thali chain from the deceased and A1 hit the deceased with iron rod on the head and other parts of the body. When PW2 and others tried to stop them, the accused criminally intimidated them. According to PW2, thereafter the accused took her daughter to the hospital.

8.The question that calls for consideration is whether the testimony of PW2 can be believed. She is none other than the mother of the deceased. She claims to have witnessed the brutal attack on her daughter by her son-in-law. It is relevant to note that the occurrence admittedly took place on 20.06.2015 at around 09.00 p.m. Caroline Viola Bel passed away only on 24.06.2015 at around 05.30 p.m. There has been a clear gap of full four (4) days between the date of occurrence and the date of death. However, complaint was lodged only on 24.06.2015 at around 11.30 p.m. If really an attack as described by PW2 had taken place, complaint would have been lodged then and there. PW2 would have definitely told PW1 and PW1 would not have kept quiet. As pointed out by the learned counsel for the respondents, PW1, PW2 and other relatives were very much in the hospital keeping vigil. That there was silence on their part till the lodging of the complaint at 11.30 p.m on 24.06.2015 leads us to believe that PW2 could not have been an eye witness. Her version sounds



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utterly improbable. The Court below therefore was justified in rejecting her testimony. On the other hand, PW1 / father of the deceased had claimed that when they rushed to their daughter's house on the occurrence date, they heard their daughter's scream from inside the house. The accused are said to have told PW1 and PW2 that the deceased had fallen down from the stairs. PW.1's version also has to be rejected for the very same reason. If really PW1 had heard his daughter's scream on the occurrence date, he would have definitely lodged complaint before the jurisdictional Police immediately. That he did not do so renders the version projected in Ex.P1 complaint as highly improbable.

9.For the very same reason, PW23 also cannot be believed. PW3 is the child born to the deceased and A1. PW3 was around 8 years when he was examined in the Court. The occurrence had taken place on 20.06.2015. Examination of witness took place on 08.02.2017. Admittedly, PW3 was in the custody of the maternal grand parents. He supported the prosecution version. In his testimony, the child deposed as follows:“அப்பொது எனது டாடி ஒரு முருக்கு கம்பியை எடுத்து எனது மம்மியின் தலையில் அடித்தார்கள்”. Such intricate description of MO1 could not have come from a child who was aged hardly 6 years when the occurrence took place. PW3 added that he and his sibling cried. If really the child has witnessed such an event, he would have definitely disclosed it to his



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maternal grandparents. The Court below rightly rejected the child's statement.

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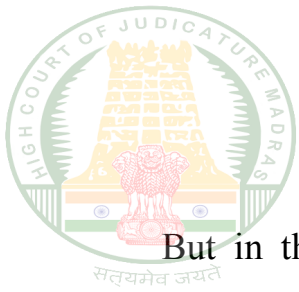
It is true that even a child can be a competent witness but then, the Court must be satisfied that the child is speaking the truth and that it has not been tutored.

10.The Hon'ble Supreme Court in the decision reported in **2023 SCC**

OnLine SC 777 (*Pradeep v. State of Haryana*) held as follows:

“9.It is a well-settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself is no ground to reject the evidence of a child witness. The Court must make careful scrutiny of the evidence of a child witness. The Court must apply its mind to the question whether there is a possibility of the child witness being tutored. Therefore, scrutiny of the evidence of a child witness is required to be made by the Court with care and caution”.

11.The Court below after a careful consideration of the testimony of PW3 came to the conclusion that the child had been tutored and therefore the said testimony has to be rejected. We are of the view that the approach adopted by the Court cannot be said to be incorrect. Mere delay in lodging the FIR will not be fatal. If proper explanation is given, the Court will overlook the delay.



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But in this case, there is no explanation. Caroline Viola Bel had suffered grievous injury on 20.06.2015. She remained totally unconscious. She died at 05.30 p.m on 24.06.2015. Nothing stopped PW2 or her husband from lodging the complaint on the same day. That no accusation was made against the respondents till 11.30 p.m on 24.06.2015 led the court below to conclude that a twisted version had been given as an after thought. That is why the Court below decided not to act on the testimony to PW2, PW23 and PW1.

12. Even the cause of death is not free from doubt. The accused have been prosecuted for the offence of murder. Therefore, it was incumbent on the prosecution to show that the deceased died due to homicidal violence. The prosecution has come out with the case that A1 hit the deceased with an iron rod on the head. The stand of A1 was that the deceased fell from the staircase. PW18 who gave the first aid as well as PW22 who conducted post-mortem deposed that the confusion and abrasion found on the body of the deceased can be due to fall from upstairs and rolling on the steps. Of course, under Section 106 of the Evidence Act, the accused is obliged to discharge the burden cast on him in respect of the facts which are within his special knowledge. In this case, the accused have come out with an explanation regarding the injury found on the deceased. Their explanation is consistent with the testimony of the medical



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witnesses. The burden of cast under Section 106 of the Evidence Act need not be discharged beyond reasonable doubt. It is enough if it is discharged on the balance of probabilities. We hold that this burden cast on the accused has been satisfactorily discharged.

13.The Court below took into account several aspects. The learned Trial judge took into consideration not only the delay in lodging the complaint but also the material contradictions among the witnesses. He finally came to the conclusion that the charges against the accused have not been established beyond reasonable doubt. The Court below also took note of the fact that recovery of MO1 was not proved. The prosecution claimed that MO1 was recovered from the house of the accused. PW5 (the recovery witness) did not support the said version.

14.We are not inclined to interfere with the well-reasoned judgment of the Court below. These Criminal Appeals are dismissed. No costs.

[G.R.S., J.] [R.P., J.]
22.01.2024

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
MGA

To



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2. The Inspector of Police,
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G.R.SWAMINATHAN, J



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