



Crl.A(MD)No.353 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.01.2025

CORAM:

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

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Sasikumar

... Appellant/Sole Accused

Vs.

The State rep. by

The Inspector of Police,

Vilampatti Police Station,

Dindigul District.

(in Cr.No.26 of 2014)

...Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to call for the entire records connected to the Judgment in S.C.No.31 of 2017 on the file of the Sessions Judge, Fast Track Mahila Court, Dindigul, dated 19.01.2021 and set aside the conviction and sentence imposed against the appellant.



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For Appellant : Mr.A.Puranthara Dhasar
Legal Aid Counsel

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor

JUDGMENT

(Judgment of this Court was delivered by **R.POORNIMA, J.**)

This Criminal Appeal is filed against the conviction and sentence passed against the appellant/sole accused in the judgment dated 19.01.2021 passed by the Sessions Judge, Fast Track Mahila Court, Dindigul in S.C.No.31 of 2017 by convicting and sentencing the appellant for the offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.15,000/- and in default to undergo six months simple imprisonment.

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

(a) The deceased Malliga is the daughter of the complainant, Chinna Karuppan. She was married to the accused eight years ago. It was a love marriage. They were blessed with two male children, namely, Kaleeswaran and Iyyanar. The complainant's son-in-law was doing



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coconut cutting work. From out of the income derived, he consumed alcohol and created unnecessary quarrel with his daughter. He had not spent a single penny towards family necessities and when the same was questioned by his daughter, he created problems with her. He also threatened her with dire consequences. His daughter came to his house and complained about him, but he pacified her and sent her back to her matrimonial home. Both were living with bitterness.

(b) On 08.07.2014 at about 07.00 p.m., when he was staying at his residence, the accused came in an inebriated condition and quarrelled with his daughter. Both the complainant and his wife shouted at him and separated them. His daughter was sitting in the veranda of one Senrayan, accused Sasi Kumar took a bill Hook from his house, shouted at his daughter “இத்தோடு செத்து தொலைடி அப்பத்தான் நான் நிம்மதியாக இருக்க முடியும்” and inflicted injuries on her right neck. His daughter fell down and was lying in a pool of blood. When the complainant tried to lift her, she had succumbed to her injuries. The incident was witnessed by Thangaraj, Senrayan, Selvaraj and others. Hence, the complainant requested to take action.



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(c) After receipt of the complaint at about 20.00 hours

WEB COPY P.W.15, Thiru.Mayilraj, Special Sub Inspector of Police registered a case in Crime No.26 of 2014 under section 302 of IPC and the same was marked as Ex.P.11 and sent to the Judicial Magistrate, Nilakkottai and other copies were sent to the concerned officials through Grade-I Constable 310 Thiru.Periya Maruthu.

(d) P.W.18, Thiru.Senthil Kumar, Inspector of Police, after receipt of the FIR, took up the matter for investigation. He went to the place of occurrence at about 22.00 hours and prepared Observation Mahazar under Ex.P.7, Rough Sketch under Ex.P.15 in the presence of P.W.12, Tmt.Saranya, the Village Administrative Officer and Thiru.Paneer Selvam, Village Assistant. He also recovered blood stained earth and ordinary earth (M.O.3 & M.O.4) under a recovery mahazar Ex.P.10.

(e) Thereafter, he examined witnesses, Chinna Karuppan, M.Balamurugan, Sendrayan, Kachammal, Thangaraj, Selvam and recorded their statements.



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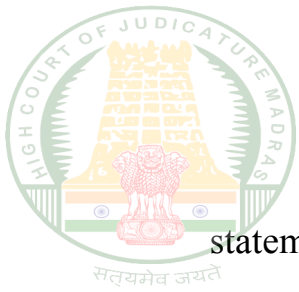
(f) On 09.07.2014 at about 6.30 a.m., he conducted inquest

on the dead body in the presence of Panchayatars and prepared the inquest report under Ex.P.17.

(g) Thereafter, on secret information on the same day at about 11.00 a.m., he arrested the accused in the Pillaiyar Natham Bus Stand and recorded his confession statement Ex.P.18 and recovered blood stained bill hook, blood stained rose colour shirt with letters as 'AKSA' (in the collar) (M.O.1 & M.O.2) under a recovery mahazar Ex.P.9 in the presence of witness.

(h) Thereafter, he came to the police station along with the accused and the material objects and sent the accused for judicial custody.

(i) On 09.07.2014 he had examined witnesses, Karpagam, Dhanalakshmi, Rajendran, Sadayandi, Selvam, Munniyandi, Saranya, the Village Administrative Officer, Panneerselvam, the Village Assistant, Periya Maruthu, Head Constable, Rabeek Raja, Head Constable, Thiru. Mayilraj, Special Sub Inspector of Police and recorded their



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statements. On 10.07.2014 he had examined the witness Nagaraj and recorded his statement. On 08.08.2014 he examined Thiru. Jawahar, Head Clerk of Judicial Magistrate, Nilakottai and recorded his statement.

(j) On 28.09.2014, he had received Forensic Science Report and examined one Annammal Mary and recorded her statement. He received the postmortem report on 30.09.2014 and recorded the statement of Dr.Sekar, Government Hospital, Nilakkottai.

(k) P.W.11, Dr.Sekar, conducted postmortem on the dead body and found the following injuries on the dead body :

Rigous mortis present all 4 limbs, eyes partially opened, Mouth closed, no bleeding from the ears, nose.

External Injury:

Right side deep cut injury around the neck 10 x 4 x 3cm including partially cut the trachea. No other external injuries all over the body.

Internal Injury:

Ribs no fracture, heart pale, chambers empty, lungs, liver, kidney, spleen, intestine - all pale. Stomach pale and contains 250 ml of undigested food particles. Hyoid bone intact. Bladder empty.

Head:



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no fracture, membrane intact, brain are pale.

Viscera sent to chemical analysis

stomach and its contains

intestine and its contains

liver & Kidney

So opinion is pending for chemical analysis

As per the postmortem reports:

the poison was not detected in the vital organs.

Opinion:

Death is due hemorrhage shock and difficult in respiration

due to cut of trachea.

(1) Thereafter, the Investigating Officer completed the investigation and filed final report against the accused under Section 302 IPC on 30.12.2014 and has sent the same to the Judicial Magistrate, Nilakkottai.

3. On receipt of the records, the Judicial Magistrate, Nilakkottai took up the case in P.R.C.No. 12 of 2015 and issued summons to the accused. After the appearance of the accused, copies of all the prosecution documents and witnesses were furnished to him free of cost under Section 207 Cr.P.C.



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4. Since the offence was exclusively triable by the Sessions

Court, the learned Judicial Magistrate committed the case records to the Principal District and Sessions Judge, Dindigul, under Section 209(A) Cr.P.C. for further action.

5. The Principal District Judge, Dindigul received the case records and numbered the case in S.C.No.31 of 2017 and made over the same to the Sessions Judge, Fast Track Mahila Court, Dindigul for disposal according to law.

6. The Sessions Judge, Fast Track Mahila Court, Dindigul took up the case in S.C.No.31 of 2017 and framed charges under Section 302 I.P.C against the accused. The charges were explained to the accused and the accused denied the charges and claimed to be tried. Hence, the case was posted to trial.

7. In order to prove the case of the prosecution, P.W.1 to P.W.18 were examined and Ex.P1 to Ex.P20 were marked. Material Objects M.O.1 to M.O.7 were produced. On the side of the accused, no witness was examined.



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8. After full trial, the trial Court held the accused guilty of the offences punishable under Section 302 IPC and convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.15,000/- and in default to undergo six months simple imprisonment, against which, the present Criminal Appeal is filed on the following among other grounds:-

(i) That the trial Court has committed grave error in finding that the evidences of P.W.1 and P.W. 2 are believable and trustworthy because there is no consistency between the P.W.1 and P.W.2 about the recovery of M.O.1. While P.W.1 categorically says in his chief that accused ran away by carrying M.O.1 Aruval, P.W.2 in her chief deposed that accused ran away leaving the M.O.1 at the scene of occurrence.

(ii) That the trial Court ought to have seen that the time of occurrence itself is not proved by the prosecution. According to prosecution, the deceased was sitting in the Sit Out (திண்ணை) of P.W.4's house and accused is alleged to have murdered the deceased at about 7.00 p.m. whereas P.W.4 who was treated as hostile witness deposed that the deceased Malliga was sleeping in his Sit Out and the deceased was murdered at about 3.00 p.m.



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(iii) That the trial Court ought to have seen that according to the evidence of P.W.3, P.W.1 and P.W.2 had reached the place of occurrence only after the alleged occurrence took place and therefore, they cannot be treated as ocular witness.

(iv) That the Trial Court ought not to have held that evidences of P.W.1 to P.W.3 categorically narrated about the scene of occurrence without any contradiction.

(v) That the trial Court ought to have seen that there were contradictions between the hearsay witnesses P.W.5 and P.W.6 about the information received by them relating to the alleged occurrence.

(vi) That the trial Court ought to have seen that, even according to the evidence of P.W.1, the deceased had her lunch by 1.00 p.m. and the same was corroborated by the evidence of P.W.11 who deposed that the deceased stomach consisted of undigested food eaten one hour before the time of death. But, according to prosecution the time of occurrence is 7.00 p.m. Per contra the time of occurrence is found to be around 3.00 p.m. The trial court ought to have held that the time of death is not proved by the prosecution.



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(vii) That the trial Court ought to have seen that the confession

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leading to recovery is not proved in manner known to law, because according to the evidence of P.W.2 and P.W.3, the M.O.1 was seized by the prosecution from the occurrence place itself, whereas according to P.W.12 the Village Administrative Officer, the M.O.1 was seized from Kanmai situate far away from the place of occurrence.

(viii) That the trial court ought to have seen that the other witness relating to Athatchi for seizure are not corroborating each other. Therefore, the judgment of the trial Court is liable to be set aside and hence, he prays to allow the Criminal Appeal.

9. The learned Additional Public Prosecutor appearing for the respondent argued that the motive for the offence was established through P.W.1, and it was not disputed by the defence. The eyewitness clearly spoke about the occurrence. Soon after the occurrence, P.W.1 and his brother's son Balamurugan went to the Police Station and gave the complaint immediately. The evidence of eyewitnesses was supported by medical evidence. Arrest, confession and recovery was proved. Hence, he prayed for dismissal of the Criminal Appeal.



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10. Heard the learned counsel on either side and perused the evidence on record.

11. Now this court has to decide whether the prosecution proved its case beyond all reasonable doubt.

12. On careful perusal of the entire records, the prosecution case unfolding from the evidence of P.W.1 to P.W.18 is as follows:

(a) P.W.1, the complainant, father of the deceased, deposed that the accused is his son-in-law and deceased Malliga is his daughter. Four years back at about 07.00pm, both the deceased and the accused had quarrelled. The accused was in the habit of consuming alcohol and created problems with his wife. He deposed that the house of the accused is situated nearby his house and that the accused went to his house, came with bill hook and inflicted injury on her neck by stating that “இத்தோடு செத்து தொலைடி அப்பத்தான் நான் நிம்மதியாக இருக்க முடியும்” and his daughter fell down. The accused fled away from the place of occurrence with the weapon. He was taken by his nephew to the Police Station and he lodged the complaint at about 08:00pm. He was examined by the



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Police.

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(b) P.W.2, Bhagyam, wife of P.W.1, in her evidence corroborated the evidence of P.W.1 by stating that the accused inflicted injury on the neck of his daughter. But she stated that the accused fled away from the place of occurrence leaving the weapon behind. She identified the weapon.

(c) P.W.3, Thiru.Balamurugan, cousin brother of the deceased also supported the version of P.W.1 and P.W.2

(d) P.W.4, Thiru.Senrayan, alleged to be an eye witness deposed that on the date of occurrence, deceased Malliga was lying in his veranda. At about 3.00 p.m, after one hour, he heard the scream and when he saw, somebody had cut her and fled away. He found the dead body of Malliga with cut injuries. Since he has not supported the prosecution case, he was treated as hostile and cross examined by the prosecution.

(e) P.W.5, Karpagam, sister of the deceased, who is a hearsay evidence, deposed that on the date of occurrence at about 7.00 p.m., her



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father P.W.1 informed that his sister had passed away. She came to the Government Hospital, Nilakkottai at about 11.00 p.m. Her mother informed that her father had gone to the Police Station. She found her sister with injuries on her neck. Both the deceased and accused had a love marriage. Often they had quarrels and her mother pacified them. She was informed that the accused had attacked his sister with knife during the quarrel and both her parents tried to prevent him in vain. The accused inflicted injury on her sister and her sister died.

(f) P.W.6, Tmt.Dhanalakshmi, sister of the deceased also corroborated the evidence of P.W.5. She is a hearsay witness.

(g) P.W.7 did not support the prosecution case and was treated as hostile and cross examined by the prosecution.

(h) P.W.8, the neighbour of the accused, deposed that he was informed that the accused had inflicted injury to the deceased, but he was not aware about the problem between the deceased and the accused. P.W.9 also corroborated the evidence of P.W.8.



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(i) P.W.10 did not support the prosecution case, turned hostile and was cross examined by the prosecution.

(j) P.W.11, Dr.Sekar deposed about the injuries found on the deceased Malliga as follows :

Rigous mortis present all 4 limbs, eyes partially opened, Mouth closed, no bleeding from the ears, nose.

External Injury:

Right side deep cut injury around the neck 10 x 4 x 3cm including partially cut the trachea. No other external injuries all over the body.

Internal Injury:

Ribs no fracture, heart pale, chambers empty, lungs, liver, kidney, spleen, intestine - all pale. Stomach pale and contains 250 ml of undigested food particles. Hyoid bone intact. Bladder empty.

Head:

no fracture, membrane intact, brain are pale.

Viscera sent to chemical analysis

stomach and its contains

intestine and its contains

liver & Kidney

So opinion is pending for chemical analysis

As per the postmortem reports:

the poison was not detected in the vital organs.

Opinion:



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*Death is due hemorrhage shock and difficult in respiration
due to cut of trachea.*

(k) P.W.12, Saranya, Village Administrative Officer deposed that on 08.07.2014, as per the request made by the Inspector of Police, she went to the place of occurrence along with the Village Assistant Paneerselvam and the Investigation officer prepared observation mahazar and rough sketch in their presence. He recovered blood stained earth and ordinary earth under the recovery mahazar and obtained their signatures. She further stated that on 09.07.2014, again the police called them and stated that the accused was found near Pillaiyar Natham Bus stop and wanted to arrest the accused. Both had gone to the above place. The Investigating officer had arrested the accused and examined them, obtained confession statement and recovered blood stained bill hook and half sleeve shirt under a recovery mahazar and both herself and his Assistant signed in the confession and recovery mahazar.

(l) P.W.13 had spoken about handing over of the FIR to the Judicial Magistrate and obtaining acknowledgment.



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(m) P.W.14, Rabeek Raja, Head Constable deposed that he recovered the dresses from the deceased Malliga viz., saree with rose flowers, rose colour inskirt, red colour blouse and handed over the same to the Inspector of Police.

(n) P.W.15 Thiru.Mayilraj, Special Sub Inspector of Police deposed about the registration of FIR in Crime No.26 of 2014, forwarded the same to the Judicial Magistrate, Nilakottai, through P.W.13 Thiru.Periya Maradhu, Head constable 310 and other copies to the concerned Officer for investigation.

(o) P.W.16, Thiru.Nagaraj, Wireman of Nilakottai deposed that there was no power cut on 08.07.2014 from evening 6.00 p.m., to morning 6.00 a.m.

(p) P.W.17, Thiru.Vijayendran, Scientific Officer of the Madurai Forensic Science Department deposed that in the material objects, namely, blood stained bill hook, dresses recovered from the deceased was found with blood stains and the shirt recovered from the accused was also found with blood stains. He further stated that the blood group found



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in the place of occurrence, dresses worn by the deceased, dresses owned by the accused and in the weapon, viz., bill hook belonged to the same group, namely blood group 'O'. The serology report has been marked as Ex.P.14.

(q) P.W.18, Thiru.Senthilkumar, Inspector of Police/ Investigation Officer spoken about the investigation and laid a charge sheet.

13. P.W.1 to P.W.3 are eyewitnesses to the occurrence. They clearly stated that the accused alone inflicted injury with bill hook on the neck of the victim Malliga. The evidence of the witnesses are cogent, consistent corroborated each other. The witness categorically stated that the accused had a quarrel with the deceased Malliga, went to his house and came with the bill hook and attacked her on his right side neck.

14. P.W.1 stated that soon after the occurrence, the accused fled away with the weapon, but P.W.2, mother of deceased stated that he left the weapon in the place of occurrence and ran away. The learned counsel for the appellant argued that the above contradiction is an important fact to decide whether P.W.1 and P.W.2 had seen the occurrence or not and



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that the trial Court believed their version completely and convicted the accused. It is true that P.W.1 in his evidence stated that accused ran away with the weapon whereas P.W.2 stated that the accused left the weapon and ran away.

15. The arrest, confession, recovery was spoken by P.W.12, Smt.Saranya, the Village Administrative Officer, on 09.07.2014. However, she clearly stated that the Investigation Officer arrested the accused Sasikumar and recovered the bill hook and shirt near Sirunayakanpatti Kanmoi in her presence. Village Assistant Paneerselvam and herself had signed in the confession- Ex.P.8, recovery Mahazar Ex.P.9. During 313 Cr.P.C questioning, the accused has not specifically denied the arrest, confession, recovery.

16. It is proved that the weapon used for the offence, the shirt worn by the accused and the dresses worn by deceased and the blood stained earth recovered from the place of occurrence belongs to 'O' blood group, which is a evident from Ex.P.13 biology report and Ex.P.14 Serology report. Therefore, the minor contradiction in the evidence of P.W.2 who is the mother of victim is not fatal to hold that the accused was not



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involved in the occurrence. The mother of the victim is an old lady and she lost her daughter in her presence. At the time of occurrence, she may not have noticed exactly whether the weapon was left or taken by the accused.

17. The evidence of eyewitnesses corroborates the medical evidence. Dr.Sekar who had conducted the autopsy clearly stated that he found deep cut injury measuring $10 \times 4 \times 3$ cm around the neck, partially cutting off the trachea. Except the above, no external injury was found on the dead body. Since both the eyewitness and the medical evidence corroborated each other, we are therefore satisfied that the minor contradiction in the evidence of P.W.2 does not affect the entire prosecution case. It is a settled proposition of law that even if there are some omissions, contradiction and disappearances, the entire evidence cannot be disregarded on that ground alone.

18. The contention of the appellant counsel is that P.W.1 to P.W.3 are relatives and interested witnesses. The Apex Court and High Court in several cases held that the interested witnesses need not be unreliable witnesses. But the Courts need to scrutinize the same with caution and if



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upon careful scrutiny, it is found that the interested witnesses are reliable, it may by itself be sufficient, in the circumstances of the particular case, form the basis for conviction. (*AIR 1981 SC 82 - Hari Obula Reddy Vs. State of Andhra Pradesh*).

19. One of the witnesses, P.W.4, though has not supported the prosecution version, stated that on the date of occurrence, he came from his work and found the deceased lying in his varanda and that after an hour, he heard an alarm and he noticed that somebody attacked her and had run away. He found that she had sustained a cut injury. Though he has not supported the prosecution version by stating that accused alone inflicted injury, but it clearly stated that the incident had taken place in his varanda.

20. The problems between the accused and the deceased were spoken by P.W.1, P.W.2, P.W.5 and P.W.6.

21. It is true that except the family members, no other witnesses supported the prosecution case. However, their evidence cannot be discarded or thrown out solely on the ground of their mere relationship



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with the deceased if their evidence is found to be correct and reliable.

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Independent witnesses will not and cannot be expected to come forward to depose due to fear. They may also have been won over by the accused.

22. The accused is none other than the son-in-law of P.W.1 and P.W.2, and brother-in-law of P.W.5 and P.W.6, and they have no motive to falsely implicate him in the offence.

23. The prosecution proved that the Investigation Officer P.W.18 recovered weapon from the accused and his shirt (M.O.1 & M.O.2). It is also proved through Ex.P.12 forensic expert report that the blood stains found in the dresses worn by the deceased, viz., shirt of the accused, blood stain found in the bill hook, which was used for the attack, blood stain earth recovered from the place of occurrence and the blood stains found in the dresses worn by the deceased, belonged to the same blood group namely, 'O' blood group.

24. The learned counsel for the Appellant argued that P.W.1 and P.W.2 admitted that when they lifted the deceased, their dresses were stained with the blood, but the Investigating Officer has not recovered



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the same and produced before the Court in order to show that both P.W.1

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and P.W.2 were present at the time of occurrence. Therefore, the presence of P.W.1 and P.W.2 is doubtful and fatal to the prosecution case. Mere non-recovery of blood stained clothes of witness is not fatal to the prosecution case, if the evidence of the witnesses are credible. Admittedly, it is proved that the eye witnesses were residing nearby the place of occurrence. Soon after the occurrence, FIR was registered on 08.07.2014 at about 20.00 hours. There is no delay in filing of FIR. The evidence of eyewitnesses and the medical evidence tallied with each other. Therefore, we hold that the argument advanced by the learned counsel for the appellant is not proved.

25. The learned counsel for the appellant further argued that the time of death was not properly proved by the prosecution as P.W.1 to P.W.3 stated that the occurrence took place at 17.00 hours, but P.W.4 stated that it occurred at 15.00 hours. Since the eye witnesses were not present in the place of occurrence, they could not properly speak about the proper time. He further argued that according to P.W.1, the deceased had her lunch by 1.00 p.m., which was corroborated by the evidence of P.W.11 Doctor that the intestine of the deceased consisted of digested



food eaten an hour before the time of death. Therefore, the trial Court ought to have held that the time of death was not proved.

26. On careful perusal of the evidence, we find that P.W.1 has not stated that her daughter had lunch on the fateful day at 1'o clock, but she normally has her lunch at 01.00 p.m. P.W.11 Doctor who had conducted postmortem in his evidence stated that 250 gm. undigested food particle were found in the intestine. The Doctor during cross examination admitted that she could have consumed food an hour before the death. However, merely on the evidence of P.W.11, we could not hold that the prosecution failed to prove the time of death. The Doctor had not specifically stated that he found rice in her intestine but stated that he found some undigested food in her intestine. The deceased could have eaten evening snacks before the death. We independently researched from books to know how much time it takes for food to digest and it became clear to us that the exact time of digestion depends upon several factors, including the type of food eat. For instance, if a person eats simple carbohydrates, it takes 30 to 60 minutes to digest. While food with more protein and fat takes 2 to 4 hours to digest. It further reveals that food breaks down in the stomach in 2 to 6 hours, food passes through the small intestine in 6 to 8 hours, food passes through the large



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intestine in about 36 hours and food passes through the entire digestive system in 2 to 5 days. Therefore, we hold that the argument advanced by the learned counsel for the Appellant is not a ground to hold that the prosecution failed to prove the time of death.

27. The prosecution clearly proved the case against accused beyond all reasonable doubts, and the trial court, after considering the evidence and documents, held the accused guilty for the offence. There is no ground to set aside the same.

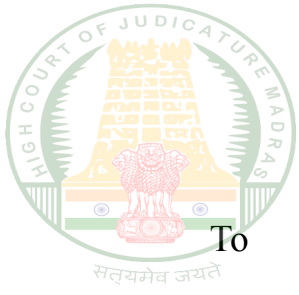
28. On careful perusal of entire records, we conclude that there is no reason to interfere with the judgment of the trial Court. The Criminal Appeal has no merit and hence, the Criminal Appeal is liable to be dismissed.

29. Accordingly, the Criminal Appeal stands dismissed and the judgment passed in S.C.No.31 of 2017 on the file of the Sessions Judge, Fast Track Mahila Court, Dindigul, dated 19.01.2021 is hereby confirmed.

(G.R.S., J.) & (R.P., J.)
27.01.2025

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

RM



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To

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- 1.The Sessions Judge,
Fast Track Mahila Court,
Dindigul,
- 2.The Inspector of Police,
Vilampatti Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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