

(2013) 07 MAD CK 0289

In the Madras High Court

Case No : Criminal Appeal (MD) No. 114 of 2011

Mani

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 11-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313(i)(b)
Penal Code, 1860 (IPC) — Section 134, 302, 354

Citation : (2013) 07 MAD CK 0289

Hon'ble Judges : T. Mathivanan, J;S. Rajeswaran, J

Bench : Division Bench

Advocate : G. Dhanalakshmi Legal Aid, for the Appellant; C. Ramesh Addl. Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

T. Mathivanan, J.—The Judgment and the order of conviction, dated 29.12.2010, sentencing the appellant/accused to suffer the imprisonment of life and to pay a fine of Rs. 1,000/-, in default to suffer the rigorous imprisonment for a further period of six months and made in S.C. No. 15 of 2010, on the file of the learned Additional Sessions Judge (Fast Track Court), Periyakulam are under challenge in this appeal. The appellant/accused had been facing two charges viz., 354 and 302 I.P.C., He was acquitted of the charge u/s 354 I.P.C., and found guilty u/s 302 I.P.C., convicted and sentenced as aforestated.

2. The appellant/accused is a married man. At the time of commission of crime i.e., as on 30.04.2009, he was aged about 28 years. His wife was having a male child in her arm. An ordinary man of prudence can differentiate between right and wrong. Knowing fully well that he was doing wrong, the appellant/accused has now been trapped into, because of his lustful desire, that too on a 16 years old girl, who is the deceased herein, he has got stuck into a stigma i.e. murderer".

3. The deceased Rajeswari was aged about only 16 years, when she was cut to

death by the appellant/accused as she had not yielded to quench his lust.

4. That on 25.05.2009, P.W.16 Inspector of Police, attached to Periyakulam Circle had laid a final report against the appellant/accused before the learned Judicial Magistrate, Periyakulam alleging that he had committed the offences punishable under Sections 354 and 302 I.P.C.

5. The learned Judicial Magistrate had taken cognizance of the offences and after the completion of preliminary enquiry, the records were committed to Court of Sessions i.e., the Principal Sessions Court, Theni Sessions Division and thereafter, it was made over to the learned Additional Sessions Judge (Fast Track Court), Periyakulam, for trial.

6. After the appearance of the appellant/accused and on hearing the learned counsel appearing for the defence as well as the learned Public Prosecutor appearing for the State, the learned Additional Sessions Judge had framed two charges under Sections 354 and 302 I.P.C., as against the appellant/accused.

7. When the ingredients of the charges were explained and questioned, the appellant/accused had pleaded innocent and claimed to be tried. Therefore, he was put on trial.

8. The prosecution, in order to substantiate it's case, has totally examined as nearly as 16 witnesses. During the course of their examination Exs. P1 to P15 and the material objects in M.Os.1 to 8 were marked.

9. The gravamen of the prosecution case is this:

9.1. The deceased Rajeswari is the daughter of P.W.1 Nagalakshmi and P.W.2 Sangili. P.W.3 Karuppiah and P.W.4 Paramasivam are brothers. Their sister Pappathi has been given in marriage to the appellant/accused and as such P.Ws.1 to 4 and the appellant/accused are closely related with each other.

9.2. At the time of occurrence, P.W.2 Sangili, who is none other than the husband of P.W.1 was undergoing treatment in Periyakulam Government Hospital as he had sustained injury in a road traffic accident.

9.3. The first incident was taken place on 16.09.2007, at about 05.30 p.m., when the deceased Rajeswari was studying in 4th standard at Kannakarai Residential Tribal School. On that date, the appellant/accused had been to her school, pulled her hand and compelled her to yield his lustful desire. On hearing her screaming noise, one Chinnaponnu and Sahadevan had rushed there for her rescue, beaten up and driven him out.

9.4. P.W.1 to 4 are the residents of Kuravankuzhi Village, whereas the appellant/accused is the resident of Kadapparaikuzhi Village situated at Vellakeni Panchayat, Kodaikanal Taluk.

9.5. That on 30.04.2009, at about 05.30 p.m., P.W.1 Nagalakshmi was present in her house and cooling milk in order to feed her one year old male child. At that

time, the appellant/accused came there and sat on the pyol. While so P.W.4 Paramasivam came there and asked him as to why he was sitting there, for which the appellant/accused had answered that he came there to leave the horse.

9.6. After half an hour, the deceased Rajeswari, who is the elder daughter of P.W.1 Nagalakshmi came there from outside. On seeing her, the appellant/accused, with a criminal intention of committing sexual assault on her, was trying to give a 500 rupee currency note. But, she abruptly refused to receive the money and was proceeding towards the entrance of her house. When she was about to enter her house, the appellant/accused had declared that "(* **)" by saying so, he had taken out an Aruval M.O.1., which was hidden in his hip and cut on her right neck from behind. When the deceased Rajeswari had warded off that cut, the appellant/accused came in front of her and again cut on her left neck. That cut had also fallen over her left cheek and inflicted injury.

9.7. On seeing this, P.W.1 Nagalakshmi had raised hue and cry and on hearing her sound, P.W.4 Paramasivam and P.W.3 Karuppiyah came running there. After noticing, the appellant/accused had fled away from the scene of occurrence. Despite their strenuous effort, they were not able to catch him.

9.8. P.W.6 Vellaian and P.W.7 Balan, who are the neighbours of P.W.1 and P.W.2 had also rushed to the place of occurrence, wherein the injured girl Rajeswari was found lying on P.W.1's lap with cut injuries on her neck.

9.9. On enquiry, P.W.1 had informed them that the appellant/accused had cut her daughter and run away from that place. Since there was profuse bleeding, P.W.6 Vellaian had taken out a towel M.O.2, which was found lying there and used the same as a bandage around her neck.

9.10. When they were about to come down from the hill, in order to take her upto the hospital, P.W.6 had informed P.W.2, who is the husband of P.W.1 about the incident through P.W.7's mobile phone. Thereafter, P.W.1 with the assistance of P.W.4, P.W.5, P.W.6 and P.W.7 had lifted the deceased the girl in a Doli.

9.11. While P.W.1. Nagalakshmi was on the way to hospital, she had informed her husband P.W.2 Sangili and one Sasikumar about the incident. They had told her that they would be waiting at Sothuparai and therefore asked her to bring the injured girl there. While they were proceeding towards Sothuparai carrying the injured girl in the Dholi, she was murmuring. When they were nearing Sothuparai, the injured had stopped the murmuring and lost her breath. This fact was also informed to P.W.2 and P.W.3.

9.12. 10.12. At about 08.15 p.m., when they were reaching Sothuparai, an ambulance was readily stationed there and from there the injured girl was taken to Periyakulam Government Hospital. At about 08.45 p.m., the injured girl was admitted in hospital and thereafter P.W.1 Nagalakshmi and P.W.2 Sangili had been to Thenkarai Police Station, where P.W.1 had lodged a complaint (Ex. P1) before P.W.14 Special Sub-Inspector of Police.

9.13. On receipt of the complaint (Ex. P1), P.W. 14 had registered a case in Thenkarai Police Station in Crime No. 174 of 2009 u/s 302 I.P.C. The printed first information report (Ex. P11) was sent along with Ex. P1 Complaint to the learned Judicial Magistrate, Periyakulam through P.W. 9 Head Constable. Accordingly, he had handed over Exs. P1 and P11 to the learned Judicial Magistrate at 01.00 p.m., on 01.05.2009.

9.14. Then P.W.16 Inspector of Police attached to Thenkarai Police Station had taken up the case for investigation. Since the place of occurrence was located at hill station, P.W.16 was not able to go there immediately and therefore he had examined P.W.1 to P.W.5, who were present in front of the hospital and recorded their respective statements. He had also examined some of the witnesses and recorded their statements.

9.15. On the next day at about 07.00 a.m., he had been to the place of occurrence, inspected the same in the presence of P.W.8 Mariappan and one Kuppan and prepared an observation mahazar (Ex. P2) and a rough sketch (EX. P12) in the presence of above said witnesses.

9.16. At about 08.30 a.m., he had collected some blood stained earth (M.O.5), some unblood stained earth (M.O.6), a blood stained stone (M.O.3) and another unblood stained stone (M.O.4) under a seizure mahazar Ex. P3, in the presence of the above said witnesses. Besides this, P.W. 16 had also seized one blood stained boy's shirt (M.O. 7) and one saffron colour dothi (M.O.8) under the cover of a seizure mahazar Ex. P3 in the presence of the above said witnesses.

9.17. Thereafter, at about 12.00 noon, he came to Periyakulam Government Hospital and conducted an inquest on the dead body of the deceased Rajeswari, which was kept in the mortuary, in the presence of the Panchayatars. After the completion of the inquest, he had also prepared an inquest report under Ex. P13. Subsequently, he had sent the dead body for postmortem examination through P.W.15 Head Constable along with a requisition under Ex. P7.

9.18. In pursuant to the requisition under Ex. P7, P.W.11 Dr. K. Easwaran, Assistant Surgeon attached to Government Head Quarters Hospital at Periyakulam had started conducting of postmortem examination on the dead body at 1.25 p.m. During the course of his examination, the following injuries were found on the person of the dead body:

- i. A cut injury on the left side of neck 3 cm., below left mastoid process 3 cm., length, 1 cm., breadth and 1 cm., depth; another cut injury on the same line of previous one, on the left mandible 2 cm., length, 1 cm., breadth and 0.5 cm., depth;
- ii. A cut injury on the right side of neck below right mastoid process 3 cm., below extending to 3 cm., below right angle of mandible 5 cm., length, 3 cm., breadth and 5 cm., depth;
- iii. Fracture of cervical bone present on the right side of cut injury and major

vessels like carotid and jugular were cut through.

iv. Tongue within the mouth 7/7/7/7 teeth, Ribs normal, Heart empty 300 g.m., Hyoid bone normal, lungs right 500 g.m., Lt 400 g.m., pale, Stomach undigested food 500 g.m., present, Liver 1500 g.m., pale, Spleen 200 g.m., pale, Kidney 150 g.m., each, Uterus pale empty, Brain 1300 g.m., pale.

9.19. After the completion of postmortem examination, P.W.11 Dr. K. Easwaran had given his opinion saying that the deceased would appear to have died of shock and hemorrhage due to the cut of major vessels like carotid and Jugular 20 to 24 hours prior to autopsy. To that effect, he had also issued a postmortem certificate under Ex. P6.

9.20. No sooner than the completion of the postmortem examination, P.W. 16 had seized the wearing apparels, which were found on the dead body, under a cover of the seizure mahazar Ex. P14 in the presence of the witnesses and he had also examined some of the witnesses including P.W.11 Dr. K. Easwaran and recorded their respective statements.

9.21. That on 02.05.2009, at about 12.30 p.m., P.W.16 had arrested the appellant near Lakshmipuram Bo Tree Bus Stop in the presence of P.W.10 Ravikumar and one Mayan. On interrogation, he had voluntarily come forward and given a confessional statement, which was reduced into writing by him in the presence of the above said witnesses.

9.22. Based on his disclosure statement under Ex. P5, the appellant/accused had taken the witnesses to the Tamil Nadu Government Drinking Water and Purifier Plant situated at Sathya Nagar, Sothuparai-Periyakulam Road and he had identified the crime weapon Aruval (M.O.1), which was placed near a cement electricity post, located on the western side of the above said water purifier plant and produced the same before P.W.16 Mr. Justin Prabhakaran, at 04.45 p.m., which was recovered by him in the presence of the above said witnesses under the cover of a seizure mahazar Ex. P15. Thereafter, the appellant/accused, along with the material objects, was sent to the Court for being remanded to judicial custody.

9.23. Subsequently, the material objects, which were produced before the learned Judicial Magistrate, Periyakulam were sent to Regional Forensic Science Laboratory, Madurai on 07.05.2009. After the completion of his investigation, P.W. 16 investigating officer had laid a final report against the appellant/accused on 25.05.2009, u/s 354 and 302 I.P.C., before the learned Judicial Magistrate, Periyakulam.

9.24. When the incriminating circumstances, arising out of the testimonies of the prosecution witnesses, were put to the appellant/accused to explain as contemplated u/s 313(i)(b) Cr.P.C., he had replied that this case was foisted against him and he had also stated that he was having no witness to be examined.

10. Heard Mrs. G. Dhanalakshmi, learned counsel, who has been nominated by the High Court Legal Services Committee to defend the appellant/accused and Mr. C. Ramesh, learned Additional Public Prosecutor appearing for the respondent Police.

11. Mrs. G. Dhanalakshmi, learned counsel, has advanced her arguments on the following grounds:

I. The charge against the appellant/accused u/s 302 I.P.C., is not maintainable even if the entire case of the prosecution is taken as proved;

II. On a harmonious reading of Ex. P2 rough sketch with the testimonies of P.W.1 to P.W.3 and P.W.16, a suspicion is prevailing over the place of occurrence;

III. The stab injuries said to have been inflicted on both side neck of the deceased girl might have been inflicted by some other person as M.O.6 saffron colour Dhoti was not worn by the accused/appellant at the alleged time of occurrence as evident from the testimonies of P.W.1 to P.W.3;

IV. P.W.3 and P.W.4 are brothers and they are closely related to P.W.1 Nagalakshmi. The wife of the appellant/accused is the sister of P.W.3 and P.W.4 and since the appellant is residing separately from his wife, on account of matrimonial tiff, P.W.3 and P.W.4 have wantonly and deliberately spoken to against the appellant/accused in order to wreak vengeance, as they are having animosity against him. Therefore, their testimonies have to be discarded;

V. The prosecution has fortunately failed to prove the first incident, which is said to have been taken place 1 + years back prior to the date of occurrence at her school when she was studying in 4th standard. The alleged witnesses for the said occurrence one Chinnaponnu and one Sahadevan were not examined to substantiate this factum for the reasons best known to the prosecuting agency;

VI. As per the evidence of P.W.16 investigating officer, at the time of arrest, the appellant/accused was found to have sustained injuries over his left hand and his shirt was also stained with blood. However, the injury sustained by the appellant/accused was not satisfactorily explained by P.W.16 and he had also miserably failed to seize the blood stained shirt of the appellant/accused and send it to chemical analysis;

VII. M.O.1 Aruval was not sent to chemical analysis. Moreover, the said Aruval did not contain any blood stain and therefore the non-sending of crime weapon Aruval to the Forensic Science Laboratory as well as the non-finding of blood stain over the said weapon would go to the very root and create a gloomy shadow over the case of the prosecution;

VIII. The Trial Court ought to have given equal importance to the case of defence as well as to the case of the prosecution. When the Trial Court had believed the testimonies of P.W.1 to P.W.4 with regard to the presence of the appellant in the place of occurrence, why it had not given equal importance with regard to the

non-examination of the witnesses to prove the first incident, which was said to have been taken place 1 + years prior to the date of occurrence; and

IX. There was a money dispute between P.W.2, who is the father of the deceased and the appellant/accused and on account of this reason, P.W.1 and P.W.2 and other witnesses have spoken to as against the appellant/accused.

12. In so far as Ground No. I is concerned, it would be discussed in the later paragraphs at the appropriate place.

Ground No. II:

13. With reference to this ground, we would like to place it on record that the alleged confliction between Ex. P2 observation mahazar and the testimonies of P.W.1, P.W.2, P.W.3 and P.W.16 will not falsify the case of the prosecution.

14. In so far as the instant case on hand is concerned, P.W.1 being the mother of the deceased girl is the sole eye witness. On perusal of her evidence, we would like to point out that her evidence is natural, convincing, cogent and corroborate with the evidences of P.W.3, P.W.4, P.W.6 and P.W.7.

15. It has become imperative on our part to reiterate that according to P.W.4 Paramasivam, at about 05.00 p.m., on the fateful day, when he was returning home from the work spot, the appellant/accused was found sitting on the left side pyol of P.W.1 Nagalakshmi's house. When he had asked him as to why he was sitting there, the appellant/accused had replied that he came there to leave his horse. It may also be relevant to note that P.W.4 Paramasivam has supported the evidence of P.W.1 Nagalakshmi with regard to the presence of the appellant/accused in the house of P.W.1 at the time of occurrence.

16. P.W.3 Karuppiyah has also spoken to in his chief-examination that at about 05.30 p.m., when his brother Paramasivam P.W.4 came to his house, their sister-in-law Nagalakshmi (P.W.1) had screamed as "(***)". On hearing her alarming sound, he had rushed there along with his brother P.W.4. While so, the appellant/accused was found running with the crime weapon Aruval M.O.1. from which blood was oozing.

17. On seeing this, he along with P.W.4 Paramasivam had chased him. However, they were not able to catch him. When enquired, P.W.1 Nagalakshmi had narrated the incident.

18. P.W.6 and P.W.7 are the circumstantial witnesses. They are the neighbours of P.W.1. According to P.W.7 Balan, at about 05.00 or 05.30 p.m., on the date of occurrence, when he along with his wife were returning from the work spot, they heard the alarming sound from the house of P.W.1. Immediately, both had rushed there, wherein the deceased girl was found lying on the lap of her mother P.W.1 Nagalakshmi with cut injuries on her neck. The same fact has been spoken to by P.W.6 Vellaiyan.

19. P.W.1 Nagalakshmi has stated in her evidence that the appellant/accused

came to her house and sat on the pyol. When the deceased girl was returning to her house, just in the frontage of their house, the appellant/accused had shown a 500 rupee currency note to the deceased girl and was also trying to give it to her. But, she had refused to receive the same and proceeded further to enter into her house. While so, the appellant/accused had declared "(***)" by saying so, he had taken out an Aruval M.O.1, which was hidden in his hip and cut on her right neck from behind.

20. According to P.W.1 Nagalakshmi, when the deceased Rajeswari had warded off that cut, the appellant/accused came in front of her and inflicted another cut injury over her left neck.

21. In this connection, Mrs. G. Dhanalakshmi, learned counsel, has argued that infact the house of P.W.1 Nagalakshmi was situated nearly 25 feet away from the solar light as it was shown in Ex. P12 site plan. But, P.W.1 in her cross-examination, had spoken that the deceased had refused to receive the currency note of Rs. 500/- and went inside the house. But, in her chief-examination, P.W.1 had spoken to that the appellant/accused had given the amount to the deceased at the door step of the house and when the deceased was about to enter the house, the appellant had caused the injuries by M.O.1 Aruval.

22. The learned counsel has also adverted to that there was a doubt as to whether the occurrence was taken place inside the house or at the door step of the house or near the solar light located 25 feet away from the house of P.W.1.

23. While advancing the arguments, she had also drawn our attention to the evidence of P.W.6 Vellaian. P.W.6 Vellaian, in his cross-examination, has deposed that two pyols on either side of the house were there proximity to the entrance of P.W.1's house. He has also spoken to that supposing if any person is sitting on the pyol or standing outside the house, he cannot be visualized from inside the house. This stray version uttered by P.W.6 cannot in anyway shift the place of occurrence to the solar light, which according to Ex. P12 site plan located just 25 feet away from the door step of the house of P.W.1.

24. On perusal of Ex. P2 observation mahazar, it does not say that the occurrence was taken place near the solar light post, which, according to the learned counsel for the appellant/accused is located 25 feet away from the house of P.W.1.

25. P.W.16, investigating officer, in his cross-examination has stated that on either side of the house of P.W.1, pyols were there proximity to the entrance. On appreciation of his evidence, we find that no question was put to him during the course of his cross-examination with regard to the shifting of the place of occurrence, particularly the distance between the house of P.W.1 Nagalakshmi and the solar light. Moreover neither Ex. P2 Rough Sketch nor Ex. P12 Site Plan were confronted with him while he was standing in the box.

26. Keeping in view of the above fact, we are of the considered view that the

argument with regard to the shifting of place of occurrence is not discernible and also assume no importance.

Ground No. III:

27. With regard to this ground, the defence theory of involvement of some other person instead of the appellant/accused in the criminality, does not find any force. It is obvious to note here that it is common parlance that it is the duty of the defence to create confusion in the story of prosecution. But, when the overt-act of the appellant/accused has been clinchingly spoken to by P.W.1 and supported by the testimonies of P.W.3, P.W.4, P.W.6 and P.W.7, we find that the above said defence theory has become pale into insignificance.

28. Having been come forward with such theory of defence, it is to be pointed out that the learned counsel appearing for the appellant shall have to form a strong basis. But, in this case, without any foundation or without any source of information the theory of defence i.e., some other person could have inflicted the cut injuries on the neck of the deceased Rajeswari is unbelievable.

29. Besides this, it is not the case of the prosecution that M.O.6 Saffron colour Dhoti is belonged to the appellant/accused. The learned counsel appearing for the appellant/accused cannot imagine herself and project such kind of argument without any supportive evidence.

Ground No. IV:

30. As adumbrated supra, we do not find any moon shine on the testimonies of P.W.1, P.W.3, P.W.4, P.W.6 & P.W.7. Infact, P.W.2, being the father of the deceased girl and husband of P.W.1, did not see the occurrence. At the time of the occurrence, as per the case of prosecution, he was undergoing treatment in Periyakulam Government Hospital. P.W.3 and P.W.4 are brothers. According to P.W.4, as stated herein before, he had seen the appellant when he was sitting on the left side of the pyol of the house of P.W.1. Therefore, the appellant's presence in the place of occurrence has been unambiguously proved and apart from this, on hearing the hue and cry, P.W.3 and P.W.4 came running towards the place of occurrence. While so, the appellant/accused was found running with the crime weapon, from which the blood was oozing. This fact has added additional strength to the case of the prosecution. Admittedly, P.Ws.1 to 4 are related with each other. The appellant/accused is none other than the brother-in-law of P.W.3 and P.W.4.

31. The learned counsel appearing for the appellant/accused has failed to establish the alleged animosity, which was said to have been prevailing between the appellant/accused on the one part and the prosecution witnesses 3 and 4 on the other part, because on account of matrimonial tiff, their sister has been residing separately from the appellant/accused. In the absence of any material evidence, it cannot be heard to say that P.W.3 and P.W.4 have deposed in order to wreak vengeance as against the appellant/accused.

Ground No. V:

32. In so far as this ground is concerned, Mr. C. Ramesh, learned Additional Public Prosecutor, has argued that in the first information i.e., complaint (Ex. P1), P.W.1 has categorically stated that two years prior to the occurrence at Kannakarai Residential Tribal School, when the deceased Rajeswari was studying there, with the criminal intention of committing sexual assault on her, the appellant/accused had pulled her hand and compelled her to yield his lustful desire. On hearing her screaming noise, one Chinnaponnu and Sahadevan had rushed there for her rescue, beaten up and driven him out. Got frustrated with this, the appellant/accused was trying to commit suicide. However, he was rescued by the said Sahadevan.

33. Mr. C. Ramesh, learned Additional Public Prosecutor has also argued that P.W.1 in her complaint (Ex. P1) had also stated that even after the first incident the appellant, under the guise of seeing her mother-in-law Chinnathai, used to visit her house and misbehave with her daughter (deceased) and that they would drive him away.

34. He has also argued that infact, the said witness Sahadevan and another witness one Chinnaponnu were not examined by the prosecution with regard to the first incident. However, their non-examination will not in anyway shake the very root of the case of the prosecution.

35. He has however argued that the overt-act of the appellant/accused had been clearly spoken to by P.W.1, who was not only the mother of the deceased girl, but also the sole eye witness for the occurrence and apart from this, her evidence had been unambiguously supported by the testimonies of P.W.3, P.W.4, P.W.6 and P.W.7. He has therefore submitted that the non-examination of the said Sahadevan and Chinnaponnu will not in any way cause prejudice to the case of the prosecution.

Ground No. VI:

36. With regard to the arrest of the appellant/accused, P.W.16 in his cross-examination has stated that for the first time, he had seen the appellant/accused at Lakshmipuram Bo Tree Bus Stand. While so, he was found facing western side. In his chief-examination, he would state that at about 12.30 p.m., on 02.05.2009 at Lakshmipuram Bo Tree Bus Stand, on seeing the police party the appellant/accused was trying to escape. However, he and his police party had managed to surround him, subsequently he was arrested in the presence of P.W.10 Ravikumar and one Mayan. P.W.10 Ravikumar alone was examined, but Mayan was not examined.

37. With regard to the injuries sustained by the appellant/accused on his hand and head, according to P.W.16, in his confessional statement, he has stated that when he was running, fearing arrest at the hands of the Police party, he had fallen down and sustained those injuries.

38. In this connection, the learned Additional Public Prosecutor, has fairly admitted that P.W.16 investigating officer had not seized the shirt of the appellant/accused and sent the same to chemical examination. But, the non-seizure of his shirt and sending it to the chemical analysis does not cause harm to the case of the prosecution.

39. He has also argued that the preponderance of probabilities, with regard to the involvement of the appellant/accused in the criminality, have been clearly substantiated by the prosecution through the witnesses viz., P.W.1, P.W.3, P.W.4, P.W.6 and P.W.7 and therefore the slight discrepancy or infirmity in the evidence of P.W.16 will not taint or cannot cause dent on the case of the prosecution.

Ground No. VII:

40. The argument advanced by the learned counsel appearing for the appellant/accused, in respect of this ground, is not able to be countenanced, because the testimony of P.W.16 has been corroborated by the testimony of P.W.10. The arrest and recovery of M.O.1 Aruval have clearly been spoken to by them.

41. Ex. P15 seizure mahazar, with regard to the crime weapon Aruval, clearly describe the identity of the weapon. It says that the length of wooden handle of Aruval measures 15 cm. The iron portion of the Aruval measures 34 cm., whereas the tip of the Aruval measures only 2 cm.,

42. In this connection, the learned counsel appearing for the appellant/accused has argued that P.W.13 Vijayendran, Scientific Officer, attached to Regional Forensic Science Laboratory, Madurai had deposed that there was no blood stain in M.O.1 Aruval. P.W.12 Head Clerk attached to the learned Judicial Magistrate's Court, Periyakulam had deposed that M.O.1 Aruval was not sent to chemical analysis and therefore the contradiction between the testimonies of P.W.13, P.W.16 and P.W.12 creates suspicion over the employment of the crime weapon M.O.1 in the crime.

43. In this connection, the learned Additional Public Prosecutor has argued that the recovery of crime weapon was established through the unassailable evidence given by P.W.16. He has also maintained that on 07.05.2009, as per the evidence of P.W.16, the material objects including the crime weapon Aruval were sent to the Regional Forensic Science Laboratory, Madurai.

44. P.W.12 Head Clerk attached to the learned Judicial Magistrate's Court, Periyakulam has deposed that the material objects relating to the case in Crime No. 174 of 2009, which were received under Form-95 were sent to the Regional Forensic Science Laboratory, Madurai through the Head Constable 759 Muthukrishnan as per the order of the learned Judicial Magistrate in R.C.R. No. 44 of 2009, dated 06.05.2009.

45. P.W. 13 Vijayendran, Scientific Assistant had examined the material objects and in this connection he had issued Ex. P8 Biological Report, dated 18.05.2009 and Ex. P9 Serology Report, dated 16.06.2009. Ex. P8 Biology Report reveals

that thirteen items including the Aruval M.O.1 were sent to the Regional Forensic Science Laboratory, Madurai. It is revealed further that the Aruval has been shown as 13th Item. In the above said report, it is stated that blood was detected on each of items 1, 3 and 5 to 12, but not on any of items 2, 4 and 13. Item No. 2 is earth mixed with stones and vegetable matter. Item No. 4 is an irregular stone weighing about 2.5 kg., and Item No. 13 is a rusty metal billhook continuous with a hollow rusty metal handle into which a wooden stick is inserted and measuring about 48.5 cm., in length.

46. It is also revealed from Ex. P8 that the blood stained samples of the above items were forwarded to the Serology Division, Regional Forensic Science Laboratory, Madurai for the purpose of grouping.

47. In the Serology Report Ex. P9, it is stated that the blood stain detected on the Item Nos. 1 to 12 was found human origin and grouped as "A".

48. In this connection, we find that the non-finding of the blood stain on the crime weapon M.O.1. Aruval is not a prime ground to say that the weapon could not have been used in the commission of crime and that the non-finding of the blood on M.O.1. Aruval will not exonerate the appellant/accused from the clutches of law or paralyze the case of prosecution.

49. The evidences adduced by P.W.1, P.W.3, P.W.4, P.W.10 and P.W.16 shall have to be read harmoniously. P.W.1 Nagalakshmi, without any hesitation, has spoken to in her evidence that she knew the identity of the crime weapon. When M.O.1 Aruval was shown to her, she had identified the same saying that this was the weapon used to cut her daughter Rajeswari.

50. P.W.3 Karuppiah has also identified the crime weapon, when he was standing in the box to give evidence. P.W.4 has also spoken to that when he along with his brother Karuppiah P.W.3 came running to the house of P.W.1, after hearing her screaming sound, the appellant/accused was found running along with the Aruval, from which blood was oozing.

51. On coming to the evidence of P.W.16, he would say that on the basis of the disclosure statement under Ex. P5, the appellant/accused had taken them to the Tamil Nadu Drinking Water and Purifier Plant situated at Sathya Nagar in Periyakulam-Sothuparai Main Road, where he had identified the weapon, which was hidden near a cement electricity post and from there he had taken out and produced M.O.1 Aruval.

52. It is significant to note here that the occurrence is said to have been taken place on 30.04.2009, at about 05.30 p.m., The crime weapon M.O.1 Aruval is said to have been recovered at the instance of the appellant/accused at 04.45 p.m., on 02.05.2009 i.e., two days after the occurrence.

53. It is common knowledge that no man would carry the crime weapon without wiping out the blood stain after the commission of occurrence. They will know how to screen the evidence and it is a specialized talent for the investigating

officer to detect and recover the incriminating articles. Since the crime weapon was discovered after two days of the occurrence, we cannot expect that the blood stain would stick on to the weapon. It would have been washed out by the appellant. By observing this, it cannot be construed that the Judgment is written merely on surmise and guisture, but we make it clear that it is made purely on the basis of the testimonies of P.W.1, P.W.3, P.W.4 and P.W.16, which have been duly corroborated by P.W.10, who is a responsible person being the Panchayat Union President.

54. In a similar case viz., Ramadoss and Others Vs. The Inspector of Police wherein one of us were sitting in the Division Bench of this Court, the material objects were not sent for analysis. Under this circumstance, the Division Bench has observed that it is purely an irregularity committed by the Investigating Officer. When the eye-witnesses are available and they have spoken about the occurrence that much weight could not be attached over this aspect. In so far as the recovery of weapons are concerned, the prosecution claimed that following the confessional statements, they have been recovered. It is true that the witnesses were not examined as to the recovery of weapons and the prosecution was unable to bring those facts as to the recovery of weapons. However, this Court, based on the testimonies of the eye-witnesses, had proceeded to find that in view of the above stated reasons, find that this Court is unable to find any reason either factually or legally to reject the findings of the Trial Court. Therefore, the conviction and sentence imposed by the Trial Court on the accused/appellant are liable to be confirmed and accordingly confirmed.

55. In an another case viz. Krishna Mochi and Others Vs. State of Bihar, , the Apex Court has held that:

Recovery of no incriminating material from the accused cannot alone be taken as a ground to exonerate them from the charges, moreso when their participation in the crime is unfolded in the ocular account of the occurrence given by the witnesses, whose evidence has been found to be unimpeachable.

56. In Rajinder and Others Vs. State of Haryana and Another, it has been held that:

Where it was alleged that the accused assaulted the deceased with lathis and firearm but no lathi was recovered either from the place of incident or from any of the accused, it was held that that alone could not be a ground to throw out the prosecution case which was otherwise truthful.

57. In the instant case on hand, the facts are somewhat different. P.W.16 and P.W.10 have categorically spoken to about the recovery of crime weapon at the instance of the appellant/accused based on his disclosure statement Ex. P5. The crime weapon Aruval M.O.1 was infact sent to the Forensic Science Department along with other incriminating articles for chemical analysis. However, as spoken to by P.W.13 Scientific Assistant, after examination of the incriminating articles, as stated in Exs. P8 Biology Report and Ex. P9 Serology Report no blood was

detected on M.O.1 Aruval. When P.W.1, P.W.3, P.W.10 and P.W.16 have clearly identified the weapon, the non-finding of blood stain on M.O.1 Aruval has become pale into insignificance and it cannot be the reason to brush aside the case of the prosecution.

Ground Nos. VIII & IX:

58. In so far as these grounds are concerned, we are of the considered view that after giving due regard to the Judgment of the Trial Court that the learned Trial Judge has struck equal balance to the case of the prosecution as well as to the case of the defence. Infact, when the incriminating circumstances were put to the appellant/accused at the time of 313(1)(b) Cr.P.C. proceedings, he had not come forward to offer any such explanation excepting to say that the case was foisted against him. He has also not come forward to examine any oral evidence on his part to support his defence case.

59. In other words, we could say that the animosity, which was suggested to have been existed in the minds of P.W.3 and P.W.4 to depose against the appellant/accused, and the alleged previous enmity between P.W.2 Sangili and the appellant/accused with regard to the money transaction have not been established. The testimonies of the prosecution witnesses are having potentiality to bring home the guilt of the appellant/accused and therefore we are of the considered view that the testimonies of the prosecution witnesses are convincing and logically having the value of probative.

Ground No. I:

60. As argued by the learned counsel appearing for the appellant/accused, the shifting of place of occurrence assumes no importance and it does not amount to contradiction.

61. We have carefully appreciated the evidences marshaled against the appellant/accused. We know this Court being the Court of appeal has firstly to ensure that the evidence is legally admissible and secondly the witnesses, who speak to it are credible and have neither any interest in implicating him nor have any ulterior motive.

62. Therefore, we find, from the testimonies of P.W.1, P.W.3, P.W.4, P.W.6 and P.W.7 and other evidences including the investigating officer P.W.16, that the guilt of the appellant/accused has been satisfactorily proved beyond all reasonable doubts.

63. As argued by the learned counsel appearing for the appellant/accused, the delay in reaching the first information report is immaterial and that P.W.1 has also stated that on her narration one constable had written the complaint (Ex. P1). It is also the case of prosecution that P.W.1 had presented a complaint petition before P.W.14 Head Constable, who had registered the First Information Report. Therefore, it is presumed that P.W.1 had presented a written complaint, but the non examination of the Head Constable, who had written the complaint

on the narration of Ex. P1 will not in anyway cause prejudice to the case of the prosecution. But, the other prosecution witnesses have clearly spoken to about the probabilities of the occurrence.

64. Obviously, P.W.1 being the mother of the deceased girl alone is the eye witness for the occurrence. Infact, the appellant/accused had inflicted cut injuries on the neck of the deceased girl in her presence. P.W.3, P.W.4, P.W.6 and P.W.7 are circumstantial witnesses. It is a settled principle of law that conviction can very well be maintained based on the testimony of solitary eye witness. In this regard, we would like to place reliance upon the following decisions:

- i. Josephy v. State of Kerala, reported in 2003 SCC (Cri) 356;
- ii. Kartik Malhar Vs. State of Bihar, and
- iii. Namdeo Vs. State of Maharashtra, .

65. In Josephy's case (cited supra), the Apex Court has observed that:

Section 134 provides that no particular number of witnesses shall in any case be required for the proof of any fact and, therefore, it is permissible for a Court to record and sustain a conviction on the evidence of a solitary eye-witness. But, at the same time, such a course can be adopted only if the evidence tendered by such witness is cogent, reliable and in tune with probabilities and inspired implicit confidence.

66. In Kartick's case (cited supra), the Apex Court has held that:

The Court can convict the accused persons on the basis of solitary witness provided his credibility is not shaken by any adverse circumstance and the Court, at the same time, is convinced that he is a truthful witness.

67. In Namdeo's case (cited supra), the Apex Court has also held that: "Neither the Legislature nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent Court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of solitary eye-witness, therefore, has no force and must be negated."

68. No doubt, P.W.3 and P.W.4 are brother-in-law of the appellant/accused and they are closely equal to P.W.1 and P.W.2. There is no hard and fast rule to disbelieve the evidences adduced by the close relatives. A close relative, who is a very natural witness cannot be regarded as an interested witness. The term "interested" postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason.

This proposition of law has been laid down by the Apex Court in Mst. Dalbir Kaur and Others Vs. State of Punjab,

69. The Apex Court, in Ganesh K. Gulve etc. Vs. State of Maharashtra, has laid down broad principles for the appreciation of evidence that "the Court is required to bear in mind the set up and the environment in which the crime is committed. The level of understanding of the witnesses. The over zealousness of some of near relations to ensure that every one even remotely connected with the crime be also convicted. Everyone's different way of narration for same facts. The Court said that these are only illustrative instances. Bearing in mind, these broad principles, the evidence is required to be appreciated to find out what part of evidence represents the true and correct state of affairs. It is for the Courts to separate the grain from the chaff".

69. (a). The evidence of P.W.1 being ocular witness has been, apart from any shadow of doubt, corroborated by the medical evidence adduced by P.W.11. In this regard Ex. P6 Postmortem Report assumes more importance.

70. Therefore, as argued by the learned counsel appearing for the appellant/accused, it cannot be heard to say that the charge u/s 302 I.P.C., is not maintainable. The atrocious and gruesome act of the appellant/accused comes under the purview of Section 302 I.P.C., and therefore we are of considered view that the learned Trial Judge has perfectly found the appellant/accused guilty u/s 302 I.P.C., and sentenced him to suffer the life imprisonment and therefore we do not find any infirmity or discrepancy in the Judgment of the Trial Court.

71. In the result, we dismiss the criminal appeal and confirm the conviction and sentence imposed on the appellant/accused. Consequently, connected miscellaneous petitions are closed. Mrs. G. Dhanalakshmi, who has been nominated by the High Court Legal Services Committee to defend the appellant/accused, has done her job excellently and we also place our appreciation on record. She is entitled to get her remuneration as per the rules and regulations formulated by High Court Legal Services Committee.

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