A PALANI

v.

STATE OF TAMIL NADU

(Criminal Appeal No. 1100 of 2009)

B NOVEMBER 27, 2018

[R. BANUMATHI AND INDIRA BANERJEE, JJ.]

Penal Code, 1860 – ss.148, 435 r/w. s.149 and s.302 r/w. s.149 – Case of the prosecution that when mother and brother of 'S' (PW-1 and PW-2 respectively) were going in an auto, 'S' along with PW-3 followed them on a motor cycle – Appellant along with other accused persons surrounded 'S' – One of the accused threw a lighted match stick into the petrol tank of the bike of 'S' and burnt it into fire – On seeing this, PW-1, 'S' and PW-3 ran in various directions with PW-1 following 'S' – When they reached near a field, all the accused surrounded 'S' – 'S' was stabbed with knives and died on the spot – Trial court convicted all the accused – High Court dismissed the appeal preferred by the appellant – Held: PW-1 is the star witness for the prosecution – Evidence of PW-1 is clear that the accused persons had caused the injuries as stated by her – Her evidence is cogent, consistent and amply supported by medical evidence and other evidence – Overt act of the appellant that he cut the deceased with aruval *had been categorically spoken by PW-1 – Plea of appellant of false implication was concurrently rejected by both the courts below, there is no ground to interfere with such concurrent finding of fact – Upon appreciation of evidence, the courts below recorded concurrent findings of fact qua appellant-accused that he along with other accused murdered 'S'– No ground warranting interference with the verdict of conviction.*

Evidence – Motive – When not important – Held: Where the case of the prosecution is based on the evidence of eye witnesses, the existence or non-existence of motive, sufficiency or insufficiency of motive will not play such a major role as in the case which is based on circumstantial evidence.

Evidence – Oral and Medical Evidence – Inconsistency between – Held: Oral evidence has to get primacy and the medical evidence is basically opinionative.

Criminal Trial – FIR – Delay in registration of – When not fatal – Discussed.

Dismissing the appeal, the Court

HELD: 1.1 PW-1, mother of deceased 'S', is the star witness for the prosecution. The evidence of PW-1 is clear that the accused persons had caused the injuries as stated by her. The overt act of the appellant-accused(A7) that he cut the deceased with aruval had been categorically spoken by PW-1. [Paras 9, 10][664-E; 665-B]

1.2 The overt acts described by PW-1 in the FIR were substantially corroborated by the medical evidence. Evidence of PW-1 is cogent and consistent and her evidence is amply supported by medical evidence and other evidence. Both the courts below having recorded concurrent findings of fact rejecting the contention of false implication, there is no ground to interfere with such concurrent findings of fact. Upon proper appreciation of evidence, the trial court has convicted the appellant/accused for causing the murder of deceased 'S' which was affirmed by the High Court. Upon appreciation of evidence, the courts below recorded concurrent findings of fact *qua* appellant-accused that he along with other accused caused the murder of deceased 'S'. There is no good ground warranting interference with the verdict of conviction. [Paras 13, 21 and 23][666-A-B; 669-A, C-D]

2. Oral evidence has to get primacy and the medical evidence is basically opinionative. The testimony of the eye witness cannot be thrown out on the ground of inconsistency. When the opinion given is not inconsistent with the probability of the case, the court cannot discard the credible direct evidence otherwise the administration of justice is to depend on the opinionative evidence of medical expert. The medical jurisprudence is not an exact science with precision; but merely opinionative. In the case in hand, the contradictions pointed out between the oral and medical evidence are not so grave in nature that can prove fatal to the prosecution case. [Para 14][666-B-E]

3.1 For the occurrence at 05.00/05.30 PM on 19.08.1996, FIR was registered at 08.00 PM. Of course, there was a delay of two and half hours in registration of FIR; there was also delay in

receipt of FIR by the Judicial Magistrate that is at 05.00 AM on 20.08.1996. There was attack on PW-1's son in the first part near the temple. Thereafter, in the second part, deceased was chased by accused persons and on reaching the paddy field, accused persons surrounded the deceased and attacked him. Therefore, it is quite clear that the entire occurrence did not take place in a split second. The occurrence was held in two parts and in those circumstances, it is quite natural that there is some time gap before the complaint (Ex.-P1) was lodged at 08.00 PM. Deceased 'S' was brutally murdered with eleven incised wounds; naturally it must have taken some time for PW-1-sole eye witness to come to her normal and then discuss with her relatives and then proceed to the police station which is situated at a distance of four kilometres, to lodge the complaint. [Para 16][667-C-F]

3.2 So far as dispatching FIR, Head Constable (PW-10) submitted that the distance between the police station, Veeravanallur and house of Judicial Magistrate, Cheranmadevi was seven kilometres and due to this murder, the buses on the route from Tirunelvelli to Nagarcoil were not plying on that day and therefore, he had to travel to the house of Judicial Magistrate by walking. Courts below found that there is nothing abnormal in the receipt of the FIR by the Magistrate as to affect the prosecution case. Delay in setting the law into motion by lodging the complaint is normally viewed by the courts in suspicion because there is possibility of concoction of evidence against the accused. In such cases, it becomes necessary for the prosecution to satisfactorily explain the delay in registration of FIR. But there may be cases where the delay in registration of FIR is inevitable and the same has to be considered. Even a long delay can be condoned if the witness has no motive for falsely implicating the accused. In the present case, PW-1 had no motive to falsely implicate the accused. PW-1 seeing her own son being brutally attacked, the effect of the incident on the mind of the mother cannot be measured. Being saddened by the death of her son, it must have taken sometime for PW-1 to come out of her shock and then proceed to police station to lodge the FIR. The delay of

two and half hours in lodging the complaint and registration of FIR and the delay in receipt of the FIR by the Magistrate was rightly held as not fatal to the prosecution case. [Paras 17, 18][667-F-H; 668-A-C]

4. Where the case of the prosecution is based on the evidence of eye witnesses, the existence or non-existence of motive, sufficiency or insufficiency of motive will not play such a major role as in the case which is based on circumstantial evidence. If the prosecution is able to prove its case or motive, it will be a corroborative piece of evidence; but if the prosecution had not been able to prove its case or motive or the motive suggested is too slender, that will not be a ground to doubt the prosecution case. When other evidence against the accused is clear and cogent as in the present case, absence of motive or insufficiency of motive is of no importance. [Para 20][668-E-F]

State of Haryana v. Bhagirath and others **(1999) 5 SCC 96 : [1999] 3 SCR 529 – relied on.**

Case Law Reference

[1999] 3 SCR 529	**relied on**	**Para 14**

CRIMINAL APPELLATE JURISDICTIONL: Criminal Appeal No. 1100 of 2009.

From the Judgment and Order dated 30.07.2007 of the Madurai Bench of Madras High Court in Criminal Appeal No. 427 of 2007

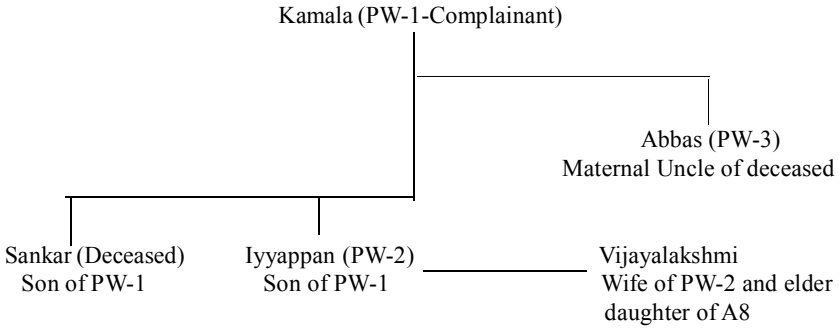
B. Karunakaran, S. Gowthaman, Advs. for the Appellant.

M. Yogesh Kanna, S. Partha Sarathi, Raja Rajesh Waran S., Advs. for the Respondent.

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. This appeal arises out of the judgment dated 30.07.2008 passed by the High Court of Madras at Madurai Bench in S.B. Criminal Appeal No. 427 of 2007 in and by which the High Court has dismissed the appeal filed by the appellant herein thereby confirming his conviction under Section 148 IPC, Section 435 read with Section 149 IPC and Section 302 read with Section 149 IPC and the sentence of imprisonment imposed upon him by the trial court.

2. Kamala (PW-1) is mother of deceased Sankar and Iyyappan (PW-2). Vijayalakshmi is the wife of PW-2 and Abbas (PW-3) is brother of PW-1. The genealogy of the deceased party is as under:-



Case of the prosecution is that on 19.08.1996 at about 05.00-05.30 PM, Kamala (PW-1), mother of deceased Sankar, Iyappan (PW-2), brother of deceased and Abbas (PW-3), maternal uncle of deceased went in an auto to Harikesavanallur to see the child of PW-2 who was born on 15.08.1996. Deceased Sankar along with Abbas (PW-3) followed them on a motor cycle. When they reached near Pilaiyar temple in Harikesavanallur, eight accused persons Balakrishnan (A1) having *aruval*, Subramanian (A2) having *aruval*, Jenakaran (A3) having knife, Mari @ Mariappan (A4) having knife, Raja (A5) having knife, Kasi (A6) having *aruval*, appellant/accused Palani (A7) having *aruval* and Jayalakshmi (A8) (since dead) having match box surrounded the deceased Sankar. On exhortation by accused Jayalakshmi, accused Mari @ Mariappan stabbed deceased Sankar from the back and accused Jayalakshmi threw a lighted match stick into the petrol tank of the bike of deceased Sankar and burn it into fire. On seeing this, Kamala (PW-1), deceased Sankar and Abbas (PW-3) ran in various directions. Kamala (PW-1) followed her son deceased Sankar. All the accused followed them. When they reached near the field, all the accused surrounded Sankar and accused Balakrishnan cut the deceased on the right shoulder and left neck with *aruval*; accused Jenakaran, Mari @ Mariappan and Raja stabbed the deceased with knives; accused Kasi and appellant/accused Palani cut deceased Sankar with *aruval*. Profusely bleedings, deceased Sankar fell down and died on the spot. Thereafter, Kamala (PW-1) went to Veeravanallur Police Station at about 08.00 PM and narrated the whole incident and lodged the complaint (Ex.-P1) with Ramaiah, Sub-Inspector (PW-11). On receipt of the complaint (Ex.-

P1), Sub-Inspector (PW-11) registered the FIR (Ex.-P11) under Sections 147, 148, 435, 341 and 302 IPC in Crime No.150 of 1996 against all the accused.

3. Dr. Ulagammal (PW-7) conducted post-mortem on the dead body of deceased Sankar and after noting multiple injuries, issued post-mortem certificate (Ex.-P6) opining that the death was caused due to shock haemorrahage and multiple injuries. On 04.09.1996, Investigating Officer made application to the court and took accused No.2, 4, 5 and 6 from judicial custody to police custody. Based on the disclosure statements of A2, A4, A5 and A6, the weapons – *aruvals* of different size (bill hooks) and knives (MO-17 to MO-20) were seized under Exts. P26 to P30 from various places pointed out by the above accused.

4. To prove the guilt of the accused, the prosecution has examined thirteen witnesses (PWs 1 to 13) and exhibited thirty three documents (Ex.P1 to P33) and twenty material objects (MOs 1 to 20). The accused were questioned under Section 313 Cr.P.C. about the incriminating evidence and circumstances and the accused denied all of them.

5. Upon consideration of evidence of eye-witness Kamala (PW-1) supported by medical evidence and other evidence, the trial court convicted all the accused under Sections 148, Section 435 read with Section 149 IPC and Section 302 read with Section 149 IPC and sentenced all of them to undergo imprisonment for life. In appeal, the High Court dismissed the appeal preferred by the appellant/accused and also the appeals preferred by other accused No.1, 3, 5 and 6 and affirmed the conviction of the appellant and sentence of imprisonment imposed by the trial court. The High Court held that the testimony of eye-witness Kamala (PW-1) is reliable and the same is corroborated by medical evidence. The High Court held that the delay in registration of FIR was not fatal to the prosecution case. The High Court allowed the appeal preferred by accused No.2 and acquitted him.

6. Learned counsel for the appellant-accused submitted that the testimony of sole eye witness-PW-1 is not credible and that she could not have witnessed the occurrence at all and the courts below erred in convicting the appellant based upon the testimony of PW-1. Learned counsel for the appellant/accused submitted that the occurrence took place at 05.30 PM and the complaint (Ex.-P1) was lodged at 08.00 PM and there was a delay of two and half hours in lodging the complaint

A which has not been explained by the prosecution. It was submitted that there was also delay in dispatching the FIR to Judicial Magistrate that the FIR said to have been registered at 08.00 PM and reached the court only on the next day early morning at 05.00 AM on 20.08.1996 and this raises serious doubt about the prosecution case.

B 7. Learned counsel for the State submitted that the evidence of eye-witness PW-1 is natural and amply supported by medical evidence and evidence of PWs 2 and 3. It was submitted that both the trial court and the High Court found that evidence of PW-1 is credible, reliable and trustworthy and the concurrent findings recorded by the courts below do not suffer from any infirmity. Learned counsel for the State further C submitted that the delay has been properly explained by the prosecution. Learned counsel for the State submitted that the evidence of PW-1 is amply supported by medical evidence and by the evidence of PWs 2 and 3 and also corroborated by recovery of weapons from other co-accused. It was submitted that PW-1 has categorically stated about the D overt act of the appellant-accused No.7 and the findings recorded by the courts below is based upon proper appreciation of evidence warranting no interference.

8. We have carefully considered the rival contentions and perused the impugned judgment, evidence and materials placed on record.

E 9. Kamala (PW-1), mother of deceased Sankar, is the star witness for the prosecution. In her evidence, PW-1 stated that on 19.08.1996 at about 05.00/05.30 PM, she along with her younger son deceased Sankar had been to Harikesavanallur in order to see the new born baby of her elder son Iyyappan (PW-2). When they alighted from the auto near F Harikesavanallur Mukkuveetu Pillayar Koli, A1 to A7 armed with dangerous weapon like knife and *aruval* came towards them and at that time, Jayalakshmi (A8) shouted "why are you simply watching, cut and kill" and immediately Mari (A4) stabbed the deceased Sankar with knife on his back. Accused No.8 opened the petrol tank of the bike of deceased Sankar and put lighted matchstick inside it and burst it into fire. On this, G the deceased party ran into different directions to save themselves. PW-1 followed deceased Sankar.

10. Regarding the second transaction of the occurrence which was in the paddy field, PW-1 clearly stated that when they reached in the paddy field, A1 to A7 surrounded Sankar and accused Balakrishnan

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cut deceased Sankar with *aruval* on his right shoulder and left side of neck. Accused Janakaran, Mari @ Mariyappan and Raja repeatedly stabbed Sankar with knives. Accused Kasi and Palani (appellant) cut Sankar with *aruval*. Sankar fell down with bleeding from his head and died on the spot. The evidence of PW-1 is clear that the accused persons had caused the injuries as stated by her. The overt act of the accused herein namely Palani (A7) that he cut the deceased with *aruval* had been categorically spoken by PW-1.

11. Assailing the evidence of PW-1, learned counsel for the appellant submitted that having regard to the place of occurrence – paddy field with paddy of about one and half feet height, PW-1 could not have been in a position to see the overt act of each of the accused. It was further submitted that the evidence of PW-1 is not natural as she did not even lift her son Sankar after the occurrence. It was contended that the clothes of PW-1 were all mud-stained but there was no blood-stains present on the clothes of PW-1 and the conduct of PW-1 is quite unnatural and that she did not even lift the body of her son Sankar.

12. In her cross-examination, PW-1 stated that she did not lift her son Sankar after his death. PW-1, however, stated that her clothes were mud-stained. Merely because, no blood-stains were found on the clothes of PW-1, her evidence cannot be doubted. Likewise, we find no merit in the contention that PW-1 could not have witnessed the overt act of the accused. As pointed out in Ext.-P6-Post-Mortem Certificate, deceased Sankar sustained about eleven incised wounds and that the body of the deceased was mutilated and the thumb and palmer aspect of left index finger were missing. There were also deep cut injuries on the back of the neck and several other deep cut injuries. The injuries inflicted on the deceased were so deep that there could be no doubt that PW-1 had not witnessed the inflicting of injuries on Sankar even though the paddy crops were about one and a half feet high.

13. Learned counsel for the appellant submitted that there are contradictions between the ocular and medical evidence and that all the injuries as narrated by PW-1 are not corroborated as per the post-mortem report. As per the opinion of PW-7-Dr. Ulgammal, the injuries inflicted by the accused persons on deceased were caused by sharp edged weapons like bill hook (*aruval*). In her cross-examination, doctor has stated that it is possible that the injuries could be caused by any sharp-

A edged weapons like axe. PW-7 further stated that the width and the depth of injuries can be increased depending on the manner in which the weapon was wielded and injury was inflicted. The overt acts described by PW-1 in the FIR has been substantially corroborated by the medical evidence.

B 14. As per the alleged variance between the medical and ocular evidence concerned, it is well-settled that oral evidence has to get primacy and the medical evidence is basically opinionative and that the medical evidence states that the injury could have been caused in the manner alleged and nothing more. The testimony of the eye witness cannot be thrown out on the ground of inconsistency. In ***State of Haryana v. Bhagirath and others*** (1999) 5 SCC 96, it was held as under:-

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> **"15.** The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation……"

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When the opinion given is not inconsistent with the probability of the case, the court cannot discard the credible direct evidence otherwise the administration of justice is to depend on the opinionative evidence of medical expert. The medical jurisprudence is not an exact science with precision; but merely opinionative. In the case in hand, the contradictions pointed out between the oral and medical evidence are not so grave in nature that can prove fatal to the prosecution case.

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15. So far as the contention of the appellant/accused that PWs 2 and 3 have not stated anything about the second transaction in the paddy field, as submitted by the learned counsel for the State, when the deceased was attacked by Mari (A4) and the motor-cycle was set ablaze, PWs 1 to 3 and deceased Sankar scattered and ran in different directions. PW-1 followed the direction in which the deceased ran that is towards the paddy field where the deceased was surrounded by the accused persons. Even though, PW-1 shouted not to cut the deceased, the accused persons inflicted injuries on the deceased and also threatened PW-1. When PWs 2 and 3 ran in different directions, it is quite natural that they could not have seen the occurrence. The evidence of PWs 2 and 3 is natural as they did not claim to be eye witnesses to the second transaction wherein the deceased was cut and stabbed at the paddy

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field by accused including the appellant-accused No.7. The arguments advanced by the learned counsel for the appellant that PWs 2 and 3 have criminal antecedents and were involved in other criminal cases are not relevant to be reckoned with.

16. Case of the prosecution is assailed on the ground that there was delay in registration of FIR and that the FIR reached the court only at 05.00 AM on the next day i.e. on 20.08.1996 after the inquest was over. Learned counsel for the appellant submitted that only after the inquest was over, complaint was prepared and FIR was registered and that is why, the FIR is verbatim repetition of the inquest report. After referring to the prosecution evidence, in particular, evidence of PW-10, the courts below rejected the arguments of the defence as to the delay in registration of FIR. For the occurrence at 05.00/05.30 PM on 19.08.1996, FIR was registered at 08.00 PM. Of course, there was a delay of two and half hours in registration of FIR; there was also delay in receipt of FIR by the Judicial Magistrate that is at 05.00 AM on 20.08.1996. There was attack on PW-1's son-deceased Sankar in the first part near the temple. Thereafter, in the second part, deceased was chased by accused persons and on reaching the paddy field, accused persons surrounded the deceased and attacked him. Therefore, it is quite clear that the entire occurrence did not take place in a split second. The occurrence was held in two parts and in those circumstances, it is quite natural that there is some time gap before the complaint (Ex.-P1) was lodged at 08.00 PM. Deceased Sankar was brutally murdered with eleven incised wounds; naturally it must have taken some time for PW-1-sole eye witness to come to her normal and then discuss with her relatives and then proceed to the police station which is situated at a distance of four kilometres, to lodge the complaint.

17. So far as dispatching FIR, Murugaiah, Head Constable (PW-10) submitted that the distance between the police station, Veeravanallur and house of Judicial Magistrate, Cheranmadevi was seven kilometres and due to this murder, the buses on the route from Tirunelvelli to Nagarcoil were not plying on that day and therefore, he had to travel to the house of Judicial Magistrate by walking. Here again, courts below found that there is nothing abnormal in the receipt of the FIR by the Magistrate as to affect the prosecution case.

18. Delay in setting the law into motion by lodging the complaint is normally viewed by the courts in suspicion because there is possibility of

A concoction of evidence against the accused. In such cases, it becomes necessary for the prosecution to satisfactorily explain the delay in registration of FIR. But there may be cases where the delay in registration of FIR is inevitable and the same has to be considered. Even a long delay can be condoned if the witness has no motive for falsely implicating the accused. In the present case, PW-1 had no motive to falsely implicate
B the accused. As pointed out earlier, PW-1 seeing her own son being brutally attacked, the effect of the incident on the mind of the mother cannot be measured. Being saddened by the death of her son, it must have taken sometime for PW-1 to come out of her shock and then proceed to police station to lodge the FIR. The delay of two and half hours in
C lodging the complaint and registration of FIR and the delay in receipt of the FIR by the Magistrate was rightly held as not fatal to the prosecution case.

19. Learned counsel for the appellant has further submitted that as per the prosecution case, the motive of the crime is misunderstanding
D between the families of accused and deceased relating to a marriage proposal with respect to the Vijayalakshmi's sister and deceased. It was submitted that the alleged motive is very weak and could not have been the reason for causing the murder of deceased Sankar.

20. Where the case of the prosecution is based on the evidence
E of eye witnesses, the existence or non-existence of motive, sufficiency or insufficiency of motive will not play such a major role as in the case which is based on circumstantial evidence. If the prosecution is able to prove its case or motive, it will be a corroborative piece of evidence; but if the prosecution had not been able to prove its case or motive or the motive suggested is too slender, that will not be a ground to doubt the
F prosecution case. When other evidence against the accused is clear and cogent as in the present case, absence of motive or insufficiency of motive is of no importance.

21. It was further submitted that PWs 2 and 3 have criminal antecedents having murder cases registered against them including the
G murder of Jayalakshmi (A8). It was contended that PWs 1 to 3 have falsely implicated the accused persons because accused No.1-Balakrishnan's mother gave a complaint against PW-2 in which he was sentenced to undergo four months imprisonment. It was submitted by learned counsel for the State that PW-2 was sentenced to undergo

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imprisonment in the said criminal case after the present incident and not before it. Both the courts below recorded concurrent findings of fact rejecting the contention of false implication, we find no ground to interfere with such concurrent findings of fact. A

22. It is pertinent to note that the other accused (A1, A4 and A6) whose conviction was affirmed by the High Court have already served their sentence and were released on remission granted by the State. The appeals preferred by accused No.1, 4 and 6 have been dismissed as withdrawn by this Court *vide* order dated 31.10.2018. B

23. Evidence of PW-1 is cogent and consistent and her evidence is amply supported by medical evidence and other evidence. Upon proper appreciation of evidence, the trial court has convicted the appellant/accused for causing the murder of deceased Sankar which was affirmed by the High Court. Upon appreciation of evidence, the courts below recorded concurrent findings of fact qua appellant-accused that he along with other accused caused the murder of deceased Sankar. We do not find any good ground warranting interference with the verdict of conviction. C D

24. In the result, the appeal is dismissed. The appellant-accused is directed to surrender himself within a period of two weeks from today, failing which he shall be taken into custody to serve out the remaining sentence. E

Divya Pandey Appeal dismissed.