

Bala Vs. State

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Court : Chennai

Decided On : Jan-21-2014

Judge : S.Rajeswaran

Appellant : Bala

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

21. 01.2014 CORAM: THE HONOURABLE MR. JUSTICE S.RAJESWARAN and THE HONOURABLE MR.JUSTICE P.N.PRAKASH Criminal Appeal Nos.759, 765 and 858 of 2012 and 190 of 2013 1.Bala 2.Murugan 3.Manikandan ... Appellants/A-2, A-4 & A-6 in CA.759/12 Jayabalan ... Appellant/A-1 in CA.765/12 Mose @ Moses ... Appellant/A-3 in CA.757/12 Thirumurugan ... Appellant/A-5 in CA.190/13 vs. State rep. by Inspector of Police, Jamnamarathur Police Station, Vellore District. ... Respondent in all the appeals. Appeals filed under Section 374 (2) of Cr.P.C. against the judgment dated 08.10.2012 made in S.C.No.294 of 2010 on the file of III Additional District and Sessions Judge, Tirupattur, Vellore District. For Appellants CrI.A.No.759 of 2013 : Mr.Swamidoss Manoharan for I appellant : Mr.A.Karthick for II appellant : Mr.M.V.Muralidharan for III appellant CrI.A.No.765 of 2013 : Mr.L.Mahendran CrI.A.No.858 of 2013 : Mr.V.Gopinath, S.C. for M/s.A.Bharathi CrI.A.No.190 of 2013 : Mr.V.Raja Mohan For Respondent : Mr.V.M.R.Rajendran Addl. P.P. * * * * * COMMON

JUDGMENT

P.N.PRAKASH, J.

Crl.A.No.759 of 2012 has been filed by Accused Nos.2, 4 and 6, Crl.A.No.765 of 2012 has been filed by Accused No.1, Crl.A.No.858 of 2012 has been filed by Accused No.3 and Crl.A.No.190 of 2013 has been filed by Accused No.5, in S.C.No.274 of 2010 on the file of learned III Additional District and Sessions Judge, Tirupattur, Vellore District. As all the appeals arise out of the common sessions case, they are disposed of by the following common judgment. 2.For the sake of convenience, the appellants will be referred in the order they were arrayed before the trial Court. 3.(a) It is the case of the prosecution that the appellants had entered the house of the deceased, Poochi (D-1) and Chinnapillai (D-2), wife of Poochi (D-1), on 17.12.2002 at around 10.30 p.m. and committed dacoity, in the course of which, they caused the death of Poochi (D-1) and his wife, Chinnapillai (D-2) and decamped with their jewellery. (b)It is the further case of the prosecution that the son of the deceased, Babu (P.W.1), who was sleeping in the house, was forcibly covered with a blanket by A-1, A-2 and others and that A-1 demanded from P.W.1 as to where the jewellery and other valuable things are kept in the house, by threatening him with a knife. It is further alleged that two of them were tightly holding on to P.W.1 and A-1 went into the house in search of booty. After some time, when the pressure on P.W.1 was relieved, he went into the house and shocked to find that his parents were not there. Thereafter, he found a blanket and a mat floating in the well of the house. He informed the neighbours and when the villagers came, they drained the water from the well and retrieved the bodies of the deceased from there. (c)P.W.1 went to the jurisdictional police station, namely, Jamnamarathur Police Station, where his statement was taken down in writing by Matheswaran (P.W.11), Sub-Inspector of Police, who registered a case in Jamnamarathur P.S. Crime No.26 of 2008 for the offences under Sections 302, 201 and 379 IPC at 15.00 hours on 18.12.2002. A copy of the printed F.I.R. (Ex.P-36) was despatched to the jurisdictional Magistrate, who received the same at 3.00 p.m. on 18.12.2002, as could be seen from the endorsement thereon. (d) Further investigation of the case was taken over by Raja (P.W.24), Inspector of Police, who went to the place of occurrence and prepared the observation

mahazar (Ex.P-48) and rough sketch (Ex.P-49). He examined the witnesses and conducted inquest over the body of Poochi (D-1) at 12.30 hours and prepared the inquest report, which was marked as Ex.P-50. The inquest report over the body of Chinnapillai (D-2), which was held at 2.30 p.m., was marked as Ex.P-51. He despatched the bodies for post-mortem to the Government Hospital, Tiruvannamalai. (e)Dr.Moorthy (P.W.14) performed the autopsy on the body of Poochi (D-1) and in the post-mortem certificate, Ex.P-37, issued by him, he has opined that death was on account of asphyxia due to strangulation. (f) Dr.Moorthy (P.W.14) also performed autopsy on the body of Chinnapillai (D-2) and he issued Ex.P-38, post-mortem certificate, opining that death was on account of asphyxia due to strangulation. (g)P.W.24 continued the investigation and examined several witnesses. He requisitioned the services of the finger print expert, Ganapathy (P.W.23), who came to the scene of occurrence on 18.12.2002 and was said to have lifted finger prints from an iron trunk and from the door frame of the house. (h)On 21.12.2002, on the basis of secret information, P.W.24 arrested Jayabalan (A-1), Bala @ Balasubramani (A-2), Mose @ Moses (A-3) and Thirumurugan (A-5). He recorded the confession statements of these accused in the presence of Arumugam (P.W.9) and Jayashankar (P.W.10). The admissible portions of the confession statements were marked as Ex.P-55 (A-1), Ex.P-56 (A-2), Ex.P-57 (A-3) and Ex.P-64 (A-5). From the disclosure statement of A-1, P.W.24 recovered a TVS-Suzuki motor bike under the cover of mahazar, Ex.P-8 in the presence of P.Ws.9 and 10. From the disclosure statement of A-2, P.W.24 recovered gold jewels (M.Os.6 to 11), under the cover of mahazar, Ex.P-11, attested by P.Ws.9 and 10. He also recovered, from the residence of A-1, some jewels, citizen watch and some cash (M.Os.1 to 5), under the cover of mahazar, Ex.P-9. The first accused also produced the weapon of offence, namely, knife with iron handle (M.O.35) and the same was seized under the cover of mahazar, Ex.P-10. From the residence of A-5, P.W.24 recovered some jewels, which were marked as M.Os.12 to 15 and the relevant mahazar is Ex.P-14. From the confession statement of A-3, P.W.24 recovered M.Os.16 to 21 under the cover of mahazar, Ex.P-12. (i)On 22.12.2002, P.W.24 arrested Manikandan (A-6) at around 1.30 a.m. and recorded his confession statement, pursuant to which, M.Os.22 to 30 were recovered under the cover of mahazar, Ex.P-16. At around 3.30 a.m., P.W.24

arrested Murugan (A-4) and from his house, he recovered jewels M.Os.31 to 34, under the cover of mahazar, Ex.P-13. (j)On 22.12.2002, P.W.24 took the finger prints of A-1 to A-6 and thereafter, sent them for remand before the jurisdictional Magistrate. P.W.24 collected the clothes worn by the deceased (D-1 and D-2) from Baskaran, Head Constable under his special reports, Exs.P-69 and 71 and they were marked as M.Os.38 to 50. P.W.24 also received the report, marked as Ex.P-73, from the Deputy Superintendent of Police, Finger Print Bureau, Thiruvannamalai. (k)Thereafter, P.W.24 examined P.Ws.3 and 13, post-mortem doctor (P.W.14), finger print expert (P.W.23) and other witnesses and completed the investigation. He laid the final report on 10.04.2003 before the jurisdictional Court. (l)On the appearance of the accused before the Judicial Magistrate, Vaniyambadi, in P.R.C. No.16 of 2003, copies under Section 207 Cr.P.C. were furnished to the accused and the case was committed to Court of Sessions, viz., III Additional District and Sessions Court, Tirupattur, Vellore District. (m)The learned III Additional District and Sessions Judge, Tirupattur, Vellore District, framed the following four charges against the accused:- Charge No.1 :- On 17.12.2002 at around 10.30 p.m., the accused A-1 to A-6 entered the house of the deceased and committed dacoity by taking away the jewels of Chinnapillai and cash of Rs.6,000/- and thereby, committed the offence punishable under Section 395 IPC; Charge No.2 :- On the same day and time, while committing dacoity, the accused committed the murder of D-1 and D-2 and thereby committed the offence punishable under Section 396 IPC; Charge No.3 :- In the course of same transaction, the accused strangled D-1 and D-2 and thereby, committed the offence punishable under Section 302 IPC on two counts; and Charge No.4 :- In order to cover up the offence, the accused dumped the bodies of D-1 and D-2 in the well along with a mat and bedding and thereby committed the offence punishable under Section 201 IPC. (n)The prosecution examined 24 witnesses and marked 73 exhibits and 50 material objects. The trial Court found the appellants/A-1 to A-6 guilty of offences under Sections 302 (2 counts), 395, 396 and 201 IPC and awarded the following sentences:- (i) A-1 to A-6 were each sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo two years simple imprisonment, for the offence under Section 302 IPC under two counts; (ii) A-1 to A-6 were each

sentenced to seven years rigorous imprisonment, with a fine of Rs.1,000/-, in default to undergo one year simple imprisonment, for the offence under Section 395 IPC; (iii)A-1 to A-6 were each sentenced to seven years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one year simple imprisonment, for the offence under Section 396 IPC; and (iv)A-1 to A-6 were each sentenced to two years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months rigorous imprisonment, for the offence under Section 201 IPC. The sentence of imprisonment imposed on the appellants/A-1 to A-6 were directed to run concurrently and the period of custody undergone by them during investigation was ordered to be set off under Section 428 Cr.P.C. (o)Aggrieved over the judgment of conviction and sentence imposed by the trial Court, the accused 1 to 6 have preferred the present appeals.

4.Through the evidence of P.Ws.1, 2 and 4, it has been established by the prosecution that the bodies of D-1 (Poochi) and D-2 (Chinnapillai) were in the well behind the house of P.W.1 and they were taken out from there. It has also been established that the hands and legs of D-1 and D-2 were tied with rope. From the evidence of Dr.Moorthy (P.W.14), who performed the autopsy on the bodies of D-1 and D-2, it has been established by the prosecution that the death was homicide. The hyoid bones from the bodies of D-1 and D-2 were taken out during post-mortem and were sent to Dr.Thangaraj (P.W.15), for his opinion. In the opinion, Ex.P-40, in respect of hyoid bone of D-1 (Poochi), Dr.Thangaraj, has opined as follows: ".Ante-mortem fracture of left greater horn of hyoid bone". As regards the hyoid bone of Chinnapillai, the doctor has opined in his report, Ex.P-41, that ".No hyoid bone fracture". From the evidence of the post-mortem doctor (P.W.14) and the expert doctor, K.Thangaraj (P.W.15), it is evident that the strangulation was prior in point of time and only thereafter, the bodies have been thrown in the well. Now, what is to be seen is whether there is evidence to connect the appellants / A-1 to A-6 to the crime.

5.In this case, the alleged eye witness, Babu (P.W.1), the son of the deceased, who was the author of the complaint, Ex.P-1, turned hostile to the prosecution case. In his chief examination, he has stated that on the date of occurrence, he was not available in the village and that he does not know the accused. He came to know about the incident only on the next day, when he returned to his house and found his parents' bodies in the well. At that time, police

were there and the bodies were fished out of the well. He has further stated that he merely signed in the complaint prepared by the police and that he does not know anything beyond that. He identified the jewels, M.Os.1 to 4, 6 to 10, 12 to 20 and 22 to 34. The strange part is that he also identifies the cash M.Os. 5 series, 11 series and 21 series, which are all Rs.500/- notes, amounting to Rs.6,000/-. To a specific question posed to him in the cross-examination, he has stated that there is no trunk box in his house. He has further stated that the jewels identified by him belong to his sister and that they were shown by the police in the police station.

6.The other relatives of the deceased, namely, Krishnan (P.W.2) son-in-law of the deceased, Dhanam (P.W.3) daughter of the deceased, also turned hostile and did not support the prosecution case. Among the two recovery witnesses, viz., P.Ws.9 and 10, P.W.10 turned hostile and did not support the prosecution case. Though P.W.9 was not declared hostile in the chief examination, in the cross-examination he has stated that when he went to the police station, the police had already recovered the jewels and cash and they were kept there. He has also stated that all the confession statements and mahazars were prepared in his office. Now, we are only left with the evidence of the investigating officer, P.W.24, in order to establish the recovery of the jewels and the evidence of P.W.23, finger print expert.

7.It was contended by the learned counsel for the appellants that P.W.23 has stated in the chief examination that he had received the finger prints of the suspects from the police on 20.12.2002, but, whereas, even according to P.W.24, Inspector of police, the arrests were made only on 21.12.2002. At first blush, we were carried away by this argument and on a careful scrutiny of the report and records of the finger print expert, it appears that the finger prints of suspects were taken only on 22.12.2002 and thereafter, they were sent to the finger print expert. The reference to 20.12.2002 in the chief examination ought to have been reconciled by the Public Prosecutor before the trial Court, while the witness was in the witness box, which unfortunately was not done.

8.The incident had taken place on 17.12.2002 and P.W.23 was examined on 18.07.2012 after a gap of ten (10) years and that too, after he retired from service. In a case of this nature, when a witness is examined after ten years, the duty of the Prosecutor in charge of the case, is to help him refresh his memory by showing the relevant documents under Section 159 of the Indian Evidence Act. The oral evidence with regard to the date

given by the expert militates against the unimpeachable record available in this case, which shows that the finger prints of the suspects were taken on 22.12.2002.

9.The finger print expert (P.W.23), lifted the chance finger prints, viz., V1, V2, V3 and V6 from an iron trunk box and the chance finger prints marked as V4 and V5 on the wooden door. He had lifted these finger prints on 18.12.2002 by visiting the scene of occurrence at the request of the investigating officer, P.W.24. The chance finger prints did not tally with the finger prints of P.W.1, son of the deceased, on comparison. Therefore, that was negated. As stated earlier, the finger print expert had taken V1, V2, V3 and V6 from the trunk box and had taken photographs of them. Of this, the chance finger print, V6, did not reveal sufficient number of clear ridge for comparison and therefore, it was excluded from comparison. Therefore, what remained was, V1, V2 and V3 lifted from the iron trunk box and V4 and V5 developed from the wooden door. In his evidence and report, Ex.P-45, P.W.23 has stated that the chance finger print, V1, tallies with the left thumb impression of one Jayapalan, S/o.Shanmugam of Athimoor village. The chance finger prints, V2 and V3, were found to be identical with the right thumb impression and right index finger prints respectively of one Murugan, S/o.Mallappan of Polur. The remaining chance finger prints, V4 and V5, found on the wooden frame of the door, were found to tally with the left middle finger print and left hand palm prints of one Bala @ Balasubramani, S/o.Chandran, of Raandam village. Though P.W.23 stated in his evidence that he had lifted finger prints, viz., V1, V2 and V3 from a trunk box in the house of the deceased, this piece of evidence stands negated by the evidence of P.W.1 to the effect that, there was no trunk box in his house. It is the definite case of the prosecution that the first accused and the deceased were good friends and that the first accused also had come to the house of the deceased. In such circumstances, even if the chance finger prints, V1, V2 and V3 are found to be that of the first accused, it cannot lead to the inference that he was the offender when other evidence militates against such an inference.

10.It was contended by the learned counsel for the appellants that Murugan, S/o.Mallappan, is a different person, whereas accused No.4 in this case is Murugan, S/o.Kanna Gounder. In this regard, learned counsel for the appellants took us through the charge framed in this case and showed that the fourth accused is one Murugan, aged 22 years, S/o.Kanna Gounder. He also

pointed to us that in the finger print slip appended to the report, Ex.P-45, given by the finger print expert (P.W.23), the name of the accused is stated as Murugan, S/o.Mallappan. Based on this, the learned counsel for the appellants contended that the suspected finger prints of Murugan, S/o.Mallappan, is not that of the fourth accused herein. 11.This argument also sounded attractive initially, but, on a careful scrutiny of the case records, we found that in the charge framed by the Court, the fourth accused is shown as Murugan, aged 22 years, S/o.Kanna Gounder and the fifth accused is shown as Thirumurugan, aged 22 years, S/o.Kanna Gounder. When we perused the trial Court judgment, it is apparent that the fourth accused is Murugan, S/o.Mallappan and the fifth accused is Thirumurugan, S/o. Kanna Gounder. Even in the memorandum of appeal in CrI.A.No.759 of 2012, wherein the fourth accused is the second appellant, his name is shown as Murugan, S/o.Mallappan. Therefore, we reject the argument of the learned counsel for the appellants in this regard. 12.Perusal of the records would reveal that there is no finger print evidence as against Mose @ Moses (A-3), Thirumurugan (A-5) and Manikandan (A-6). They were also not identified by any witness as having been present at the place of occurrence. Criminal liability has been fastened on them based on the recovery of jewellery about which we shall discuss a little later. 13.Learned counsel for the appellants contended that there is no credible evidence to show as to who had taken the finger prints of Jayabalan (A-1), Bala (A-2) and Murugan (A-4). On a reading of the evidence of the investigating officer (P.W.24) shows that he merely states in his examination in chief that on 22.12.2002, he had taken finger prints of A-1 to A-6 and thereafter, sent them for remand. 14.Under Section 4 of the Identification of Prisoners Act, 1920, any person, who has been arrested in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards, shall, if so required by a police officer, allow his measurements be taken in the prescribed manner. Under Section 8 of the said Act, power was given to the State Government to frame rules and to prescribe the manner in which finger prints should be taken. 15.In the year 2002, when the incident in this case occurred, the State of Tamil Nadu had not framed any rules as per Section 8 of the Identification of Prisoners Act. The procedure that was followed then was the one adumbrated under Order 836 of the Tamil Nadu Police Standing Orders (presently Order 801).

Order 836 (3) (f) defines the word 'Proficient' as follows: ". 'Proficient' means an officer, who has been declared by a Superintendent of Police or in the City of Madras by the Commissioner of Police, to be qualified to take clear and well-rolled impressions.". Order 836 (3) (g) defines the word 'expert' as follows: ". 'Expert' means an officer, who has been declared by the Deputy Inspector General of Police, Railways and Criminal Investigation Department, to be competent to examine, classify and give expert opinion on finger impressions.". Order 836 (4)(k) states that finger prints shall be taken only by the officers declared by the Superintendent.

16.From the reading of the above provisions of the Police Standing Orders, it is clear that finger prints of suspects must be taken by the person, who is declared by a Superintendent of Police in the Mofussil or Commissioner of Police, in the city of Madras, to be qualified to take clear and well-rolled impressions. This is a primary requirement in law.

17.In the present case, P.W.24 has not stated anywhere that he is 'proficient' or 'an expert' in taking finger prints or that he was declared to be qualified by the Superintendent of Police of his district. In this regard, the learned counsel for the appellants relied upon the judgments of this Court in Thavaraj Pandian and 3 others vs. State, etc. (2003-1-L.W. (Crl.) 413) and Suresh and another vs. State, etc. (2004-2-L.W. (Crl.) 814), in support of their argument that failure to follow the procedure enunciated in Order 836 of the Tamil Nadu Police Standing Orders for taking finger prints would vitiate the evidence. The learned counsel for the appellants also relied upon a judgment rendered in Sathish Kumar vs. State [2012 (2) MWN (Cr.) 305 (DB)]. (in which one of us, Justice S.RAJESWARAN presided), in support of this proposition.

18.We are in agreement with the argument advanced by the learned counsel for the appellants based on the rulings cited supra and hold that the prosecution had failed to prove satisfactorily that the finger prints of A-1, A-2 and A-4 were not taken in the manner prescribed by Order 836 (now, Order 801) of the Tamil Nadu Police Standing Orders and therefore, the evidence of the finger print expert (P.W.23) cannot be relied upon to fasten criminal liability on the appellants herein.

19.Coming to the seizure of gold ornaments, the prosecution had failed to prove that the gold ornaments in question belong to the deceased. On the contrary, it is in the evidence of P.W.1 that the gold ornaments belong to his sister, Vasantha (P.W.18). Vasantha (P.W.18), in her evidence, stated that the police had brought

her jewellery from the house and showed it to them. P.W.18 was living in Vathiyankuttai village, whereas the occurrence took place in Penganur village in the house of P.W.1. There is no evidence to show how the ornaments of P.W.18 came to the house of P.W.1 at the first instance. P.W.1 has further stated in his cross-examination that when he went to lodge the complaint itself, the police men showed him the ornaments. Therefore, the case of the prosecution that the ornaments were recovered only after the arrest of the accused stands negated by the evidence of P.Ws.1 and 18. Notwithstanding this, the independent witnesses, P.Ws.9 and 10, did not support the case of the prosecution with regard to the recovery of the ornaments. Though P.W.9 was not declared hostile, yet he has stated in cross-examination that when he went to the police station, he was told by the police that they have already recovered the ornaments. He has also stated that he signed the recovery mahazars in the police station. He was not declared hostile by the prosecution and therefore, his evidence would go to support the case of the defence. 20. Thus, from the evidence of P.Ws.1, 18, 9 and 10, we conclude that the prosecution had failed to prove satisfactorily that the ornaments were seized pursuant to the disclosure statements of the appellants / accused. Therefore, there is no tangible material to connect the appellants with the crime. 21. Before parting with this case, we are constrained to comment about certain disturbing features in the manner in which the trial in this case was handled by the prosecution. Four important witnesses namely P.W.5, P.W.19, P.W.20 and P.W.21 were declared hostile in the chief examination itself. In the cross examination by the Public Prosecutor, these witnesses were confronted with their statements given to the police under Section 161 Cr.P.C. To put it in easy words, the Public Prosecutor has read the entire 161 statements to each of the witnesses and has asked them, ".Have you said so to the Police ?.". They have said ".Yes".. They had not denied that they gave such a statement and accepted that they told the police as recorded in the 161 statement. In fact, P.W.5 has deposed that he had not stated so in the chief examination because of failed memory. From the analysis of their evidence it appears to us that these witnesses were willing to support the prosecution case but they were not able to recollect the events that took place a decade back. The incident took place in 2002 and these witnesses deposed in 2011. Though in their cross examination they have affirmed that they

had told the police as stated in the 161 statement, unfortunately that cannot be considered as evidence of fact. In other words, a witness should narrate the facts known to him in the Court in the same manner as he had narrated the facts to the police during investigation. From the evidence of these witnesses, what has been established is, they had given the statement during investigation which has been correctly recorded by the police, beyond that it does not prove the fact which is required to be proved by their oral testimony in the witness stand. A previous statement can never be substantive evidence. It can be only either to corroborate or contradict the witness whilst he is in the witness stand. A 161 statement suffers from an additional disqualification, in as much as it cannot be used to corroborate the testimony of the witness. This anomaly occurs in our criminal justice system because trial Court prosecutors crucify themselves on the cross of 161 statement of witnesses. When, after declaring these witnesses hostile, the prosecutor got the opportunity to cross examine the witnesses, he should have put leading questions to them to elicit information to prove the relevant fact or fact in issue, instead of merely confronting them with the 161 statement. Such mishaps occur because trial Court Prosecutors seldom interview witnesses before commencement of trial to test the waters and when the witness falters a little from what he had stated in the 161 statement, he is immediately declared hostile and he is simply confronted with the police statement without anything more. In *Hukam Singh and others vs. State of Rajasthan* [(2000) 7 SCC490, para 14 reads as under: ".14. The situation in a case where the prosecution cited two categories of witnesses to the occurrence, one consisting of persons closely related to the victim and the other consisting of witnesses who have no such relation, the Public Prosecutor's duty to the Court may require him to produce witnesses from the latter category, also subject to his discretion to limit to one or two among them. But if the Public Prosecutor got reliable information that any one among that category would not support the prosecution version he is free to state in court about that fact and skip that witness from being examined as a prosecution witness. It is open to the defence to cite him and examine him as a defence witness. The decision in this regard has to be taken by the Public Prosecutor in a fair manner. He can interview the witness beforehand to enable him to know well in advance the stand which that particular person would be adopting when examined as a witness in court.". It may be

appropriate to refer to certain provisions in the Karnataka Police Manual on this subject. ".CHAPTER XXXIX PROSECUTION OF CASES IN COURTS15695) - It is essential that before the trial or inquiry commences, the Prosecutor in-charge of the case must prepare his case and know what his witnesses are going to state in the court. He should, therefore, interview each witness well in time and ascertain from him the facts to which he would testify in the court and instruct him how he should behave in the court. He should be cautioned to keep his temper, to answer questions distinctly and in a natural manner, and not to volunteer more information than is asked of him. A timid or nervous witness would need encouragement, while a self-opinionated, loquacious one must be warned against making his answers unnecessarily long or speaking about matters regarding which he has not been questioned.". Prosecutors think that it is a taboo for them to interview witnesses. This outlandish attitude ought to be effaced. The prosecutor is a responsible public servant whose duty is to adduce the best evidence in a fair manner and aid the Court of law to arrive at a just conclusion. He is a representative of the State and is a bridge between the police and the Court. He owes a public duty. Therefore, it cannot be presumed that he will tutor witnesses. Such an inference will go against the presumption that officials will act in accordance with law and not in violation thereof. However unpalatable, it is a fact that the common man shudders on receipt of summons from a Court. The entire atmosphere is surreal and scary to him that he would require to be given sufficient confidence to depose in his own simple dialect. An interview by the Public Prosecutor is an opportunity to instill confidence in the mind of witnesses to speak the truth fearlessly. We are sure that had the trial court Public Prosecutor interviewed these witnesses who are rustic persons from the same village, they would have in their own native style unfolded the truth thereby helping the Court to come to a just decision. We are constrained to acquit the appellants herein not because they are innocent as a lamb, but because there is no legal evidence to fasten criminal liability on them. 22.In the result, all the Criminal Appeals filed by A-1 to A-6 are allowed. The conviction and sentence imposed on the appellants/A-1 to A-6 by judgment dated 08.10.2012 in S.C.No.294 of 2010 by the learned III Additional District and Sessions Judge, Tirupattur, Vellore District, are set aside and the appellants / A-1 to A-6 are directed to be released forthwith, unless they are wanted in connection with any

other case. The fine amount, if any paid, shall be refunded to them. (S.R., J.) (P.N.P., J.) 21.01.2014 Index : Yes Internet : Yes sra To 1.The III Additional District and Sessions Judge, Tirupattur, Vellore District.

2. -do- Thro' The Principal Sessions Judge, Vellore District.

3. The District Collector, Vellore.

4. The Director General of Police, Chennai.

5. The Inspector of Police, Jamnamarathur Police Station, Vellore District.

6. The Public Prosecutor, High Court, Madras. S.RAJESWARAN, J.

and P.N.PRAKASH, J.

(sra) Pre-delivery judgment in Crl.A.Nos.759, 765, 858 and 190 of 2013
21.01.2014

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