

Lakshmanan Vs. State

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SooperKanoon Citation : sooperkanoon.com/1169202

Court : Chennai

Decided On : Mar-18-2014

Judge : V.Dhanapalan

Appellant : Lakshmanan

Respondent : State

Judgement :

In the High Court of Judicature at Madras Date :

18. 03.2014 Coram : The Hon'ble Mr. Justice V. Dhanapalan and The Hon'ble Mr. Justice G. Chockalingam CRL.A.Nos.24 of 2012 and 844 of 2011 Lakshmanan .. Appellant in Crl.A.No.24 of 2012/A.1 Rajan .. Appellant in Crl.A.No.844 of 2011/A.2 .. Vs .. State rep. By Inspector of Police M1- Periyanaickenpalayam Police Station Coimbatore District. Crime No.452/2008. .. Respondent in both appeals Prayer in both Crl.As.:- Criminal appeals preferred under Sec.374(2) of the Code of Criminal Procedure against the judgment of the Additional District and Sessions Judge, Fast Track Court No.3, Coimbatore, made in S.C.No.263 of 2010, dated 28.09.2011. For Appellants : Mr.Philip Ravindran Jesudoss in Crl.A.No.24/2012 Mr.N.S.Sivakumar in Crl.A.No.844/2011 For Respondent : Mr.M.Maharaja, Additional Public Prosecutor - - - - COMMON

JUDGMENT

(Judgment of Court was delivered by G. CHOCKALINGAM, J.) This Judgment will govern these two appeals in CrI.A.No.24 of 2012 by A-1 and CrI.A.No.844 of 2011 by A-2.

2. Challenge is made to the judgment of the learned Additional Sessions Judge, Fast Track Court No.3, Coimbatore, made in S.C.No.263 of 2010, whereby the appellants who are arrayed as A-1 and A-2 respectively, stood charged, tried and found guilty as here under: ACCUSED CHARGES FINDING PUNISHMENT A-1 and A-2 449 IPC Guilty 7 years Rigorous Imprisonment along with a fine of Rs.500/- and default sentence of six months rigorous imprisonment A-1 and A-2 302 r/w. 34 IPC Guilty Life imprisonment along with a fine of Rs.500/- and default sentence of six months rigorous imprisonment A-1 and A-2 392 IPC Guilty 7 years Rigorous Imprisonment along with a fine of Rs.500/- and default sentence of six months rigorous imprisonment 3. Short facts necessary for the disposal of these appeals can be stated as follows: [a]. The deceased Thulasiammal, mother of P.W.1, was residing in Door No.395/403 at Jothipuram near Periyanaickenpalayam. On 11.09.2008 at about 13.30 hours while the deceased Thulasiammal was sleeping in a cot in her house, A.1 along with his friend A.2 trespassed into the house and with the common intention of causing death of the deceased, A.1 throttled the neck of the deceased Thulasiammal with hands forcibly while A.2 caught hold of her legs firmly. Then, A.1 took out a stout coconut stick which was kept in the house and beat on her forehead near right eyebrow, as a result of which, the deceased Thulasiammal died instantaneously due to the violent compression of neck and head injury. [b]. On the same day at about 5.00 p.m., when P.W.1, son of the deceased, came to see his mother at her residence, he found that his mother Thulasiammal was lying with injuries on her forehead. Immediately, P.W.1 informed about the same to P.W.2, Purushothaman, a tea stall owner. Thereafter, both P.Ws.1 and 2 went inside the house of the deceased and found that the deceased Thulasiammal had died. Subsequently, P.W.1 enquired P.W.2 as to whether any person entered into his mother's house?. P.W.2 told that both the accused 1 and 2 went into the house of deceased Thulasiammal at about 13.30 hours on the same day. At that time, the first accused was wearing a black colour cap on his head and within half-an-hour, they came out of the house and at that time, the cap was missing from A1. On hearing the above fact, P.W.1 came to

the police station and gave a complaint-Ex.P.1 to the police. [c]. P.W.10-the then Sub-Inspector of Police at Periyanaickenpalayam, received the complaint from P.W.1 and registered a case in Crime No.452 of 2008 for the offences under Sections 302 and 380 I.P.C. and prepared the First Information Report-Ex.P.16. He sent the original F.I.R. and complaint to the concerned Court and the Xerox copy of the same to the superior officer. (d) P.W.11-Inspector of Police at Periyanaickenpalayam police station, who took up the investigation in this case, went to the scene of occurrence and prepared an Observation Mahazar-Ex.P.2 and Rough Sketch-Ex.P.19 and also recovered the bloodstained white jacket [blouse]. and black colour cap under a seizure mahazar. Then, he held inquest on the dead body of the deceased in the presence of panchayadhars, enquired the witnesses and recorded their statements and also prepared inquest report-Ex.P.17. Then, he sent the body for post-mortem with a requisition to the Coimbatore CMC hospital. (e) P.W.9-Dr.J.Muthukumaran, conducted autopsy on the body of the deceased on 12.09.2008 at 10.55 a.m. and gave a Post-mortem Certificate-Ex.P.13. The parts of the body was sent to medical examination and the chemical examination report is marked as Ex.P.14. He gave his final opinion-Ex.P.15 stating that the deceased would appear to have died of violent compression of neck and head injury and its complication. [f]. On 13.09.2008 both the accused appeared before the Village Administrative Officer-P.W.5 and gave extra judicial confession statements before him. P.W.5 recorded the statement of both the accused. Ex.P.4 is the statement given by the first accused and Ex.P.5 is the report of P.W.5. Thereafter, P.W.5 brought both the accused to the concerned police station. [g]. On 13.09.2008 at about 3.00 p.m., the Inspector of Police/P.W.11 arrested the accused 1 & 2 produced by P.W.5, the Village Administrative Officer and recorded their confession statements and in pursuance of the confession statements given by the accused 1 & 2 under Exs.P.6 and P.7, P.W.11 recovered M.Os.3 to 8 and M.O.9-gold chain, which was pledged in the Muthoot Finance. After completing the investigation, P.W.11 laid the final report against the accused 1 and 2 for the above stated offences. [h]. The case was committed to Court of Sessions and necessary charges were framed. In order to substantiate the charges, the prosecution examined totally 11 witnesses as P.Ws.1 11, marked 20 documents as Exs.P.1 to P.20 and produced M.Os.1 to 9.

[i]. When the accused were questioned under Section 313 Cr.P.C., with regard to the incriminating materials appearing against them through the evidence adduced by the prosecution, they have come forward with the version of total denial and they have stated that they have been falsely implicated in this case. The accused have not chosen to examine any defence witnesses nor mark any defence documents on their side. [j]. The Trial Court, on consideration and appreciation of the evidence adduced by the prosecution, found the appellants/accused 1 and 2 guilty for the offences under Sections 449, 302 r/w. 34 and 392 IPC and convicted and sentenced them as already stated above. Hence the present appeals at the instance of A-1 and A-2 respectively.

4. Mr.Philip Ravindran Jesudoss, learned counsel appearing for the appellant in Crl.A.No.24 of 2012/A.1 and Mr.N.S.Sivakumar, learned counsel appearing for the appellant in Crl.A.No.844 of 2011/A.2 would vehemently contend that the entire prosecution case suffers from serious infirmities and inconsistencies. It is contended on the side of the appellants that the case of the prosecution entirely depends upon the circumstantial evidence, viz., the alleged confession statement said to have been given by the first accused to the Village Administrative Officer-P.W5 and the confession statements given by the accused 1 and 2 before the Inspector of Police-P.W.11 and there is no direct eye-witness to the occurrence and the prosecution has not proved each and every chain link through cogent evidence.

5. Further, the learned counsel appearing for the appellants argued that P.W.1, in his complaint, has not mentioned the name of the second accused at the first instance and belatedly included the name of second accused, which is highly unbelievable and it is only an afterthought. Further, the learned counsel for the appellants argued that there is a doubt with regard to arrest and recovery. Further, on the side of the appellants, it was argued that all the properties recovered at the place of occurrence were not sent to chemical examination particularly, one white jacket [blouse]., which was recovered at the place of occurrence and no explanation was offered by the prosecution for not sending the said material object for chemical examination. The learned counsel for the appellants further argued that since the prosecution case is based upon the circumstantial evidence, the

prosecution has to strictly prove the confession and recovery from the accused 1 and 2. But, the prosecution has failed to prove the same beyond all reasonable doubt. Hence, the accused are entitled for the benefit of doubt and they are entitled for acquittal. The learned counsel for the appellants further argued that mere recovery alone is not sufficient to connect the appellants/accused 1 and 2 with the crime. Hence, the learned counsel for the appellants/accused 1 and 2 prayed that both the appeals have to be allowed and the accused are entitled for acquittal.

6. Mr.M.Maharaja, learned Additional Public Prosecutor contended that the lower Court, after appreciating and analysing all the evidences, documents and material objects produced before that Court, came to a correct conclusion that the accused 1 and 2 are guilty for the offences as stated above. Since the case is of circumstantial evidence and the same is proved by the prosecution without any break in the connecting link, the judgment of conviction rendered by the trial Court has to be confirmed and both the appeals are liable to be dismissed. In support of his contention, the learned Additional Public Prosecutor has relied upon a decision of the Hon'ble Apex Court reported in 2011 (8) Supreme 562 [State of Rajasthan Th. Secy. Home Dept. Vs. Abdul Mannan], wherein it was held as follows:-
".Indian Penal Code, 1860 - Sections 302/149, 148, 324/149 and 449-prosecution of accused persons for causing death of two persons and injuries to one another by assaulting them with deadly weapons-Conviction by Trial Court-On Appeal, High Court acquitted all the accused persons-State Appeal-Injured witness PW7 made statements which fully aided the case of the prosecution and his statement recorded on adjourned date before trial court which was at variance could not be treated as gospel truth-Identity of the accused was fully established by statements of PW3, PW4, PW5 and PW6 No reason, as to why PW4 and PW5 neighbours of deceased who were otherwise independent witnesses, and doctor would involve the accused falsely There was no animosity between the parties No reason for Court to hold that Pws.4 and 5 were not trustworthy Their statements described the occurrence in its proper course and was compelling evidence of the same Incident in question involved a mob but only few persons had entered the house of the deceased, out of which 7 to 8 persons could be identified including the three accused as having inflicted injuries on the body of the deceased and were duly

identified by prosecution witnesses. The injury on the head duly found corroboration from the statement of the Doctor i.e., Ex.P4. It was not a case where medical evidence not supported ocular evidence. Some discrepancies or some variations in minor details of the incident would not demolish the case of the prosecution unless it affects core of prosecution case. The core of prosecution was that when the mob came, PWs.4 and 5 ran to their houses, locked their doors, went to the roof of the houses which were adjacent to the house of deceased and watched some members of the mob, of whom they could identify a few, assault the deceased. This statement clearly showed trustworthiness of these witnesses as they had stated that there were some other persons whom they could not identify. However both these witnesses and complainant clearly identified persons who had entered and assaulted the deceased persons. Cumulative effect of the ocular evidence and documentary evidence was that prosecution had been able to establish its case beyond reasonable doubt. Impugned judgment of High Court set aside. Appeal allowed."

7. We have considered the rival submissions made on both sides and perused the judgment of the trial Court and the materials available on record.

8. In this case, the undisputed facts are as follows:- P.W.1 is the son of the deceased Thulasiammal and his elder brother is Subramaniam and one another brother is Rajendran. P.W.1's elder brother Subramaniam [mentally retarded]. was residing along with the deceased Thulasiammal, who was aged about 80 years. Further, A.1-Lakshmanan, who is the old tenant of the deceased Thulasiammal, had vacated the house of the deceased two months prior to the date of occurrence. P.W.2-Purushothaman is the tea shop owner. P.W.2's tea shop is situated just opposite to the house of the deceased Thulasiammal.

9. It is admitted by the prosecution that there is no eye-witness to prove the crime. Hence, the case is mainly based upon the circumstantial evidence. So, the duty of the prosecution is to prove each and every circumstances to link the accused with the crime without any break.

10. Further, it is admitted that even though extra judicial confession was recorded by the Village Administrative Officer-P.W.5/Rajkumar, the Inspector of

Police/PW11 also recorded the confessions of both the accused 1 and 2 in the presence of the Village Administrative Officer and the Village Assistant. But the trial Court, after considering the evidence of the Village Administrative Officer, has found that the Village Administrative Officer has not followed the procedure laid down by law for recording the extra judicial confession and rejected the extra judicial confession given before the Village Administrative Officer-P.W.5. Hence, the extra judicial confession, which is deemed as the one of the chain link put forth on the side of the prosecution was broken.

11. The next link connecting the accused with the crime is the recovery of the material objects i.e., M.Os.3 to 9 under seizure mahazars Exs.P.8 to P.11, pursuant to the confession of A.1 and A.2 given before the Investigating officer, which are marked as Exs.P.6 and P.7. The learned counsel for the appellants vehemently contended that the alleged confession and recovery are totally false and the prosecution failed to prove the same beyond all reasonable doubt.

12. In the alleged confession-Ex.P.6 given by A.1, he has stated as follows:-
xg;g[jy; thf;FK:yk; ".,d;W1309/2008 k; njjp gfy; 11/00 kzpf;F. nkl;Lg;ghisak; fhty; epiyaj;jpy;. bghpaehaf;fd;ghisak; fpuhk eph;thf mYtyh; uh\$;Fkhh; 50. j/bg/ kija;aft[z;lh; vd;gtUk;. gj;jpug;gd; fpuhk cjtpahsh; bghpaehaf;fd;ghisak; ,th;fs; 1/ yl;Rkzd; 26. j/bg/ fpUc&z;zd;. 32 tpndhgh mwpbthsp efh; NO.4, tPughz;o. 2/v!;/uh\$h 28 j/bg/rt[hpKj;J.

282/10A n\$hjpg[uk; Kjy; tPjp. bghpaehaf;fd;ghisak; ,th;fspy; yl;Rkzd; vd;gth; brhd;d thf;FK:yj;Jld; epiyaj;jpy; M\$h; gLj;j nkw;go vjphpfis bghpaehaf;fd;ghisak; fhty;epiya Fw;w vz;/452/08 U/S302IPC & 380 IPC tHf;F rk;ge;jkhf ifJ bra;Jk; nkw;go rhl;rpfs; 1/uh\$;Fkhh; 2/gj;jpug;gd; ,th;fs; Kd;dpiyapy; Ma;thsh; Mfpa ehd; tprhhpj;j nghJ1115 kzpf;F1J vjphp yl;Rkzd; vd;gth; ve;jtpj Jhz;LjYk;. mr;RWj;jYk;. Mir thh;j;ija[k;. ,y;yhky; jhdhfmt Kd; te;J brhd;d xg;g[jy; thf;FK:yk; gpd;tUkhW/ //////////////// vjphp yl;Rkzd; vd;gthpd; xg;g[jy; thf;FK:yj;jpd; bjhlh;r;rp/ (gf;fk; - 5) eP';fs; vd;id ifJ bra;jPh;fs;/ eP';fs; vd;idf; Tl;og;nghdhy; ehd; Jsrapak;khis moj;j fl;il kw;Wk; vdJ Rrfp nkhl;lhh;irf;fps;. uj;jk;gl;l rh;l;. Jsrapak;khspd; fthp'; tisay;. 2 gt[d; j';f eif. mIF ur PJ kw;Wk; mIF itj;j filia fhl;oa[k; mij M\$h;gLj;Jfpnwd;/ (sd.) Rajan 13.09.2008 (sd.) rPdpthrd; (sd.) 1.AM.Rajkumar fhty; Ma;thsh; 13.09.2008 bghpaehaf;fd;ghisak;.

(sd.) 2. G.gj;ug;gd; nfhit."

13. In the alleged confession-Ex.P.7 given by A.2, he has stated as follows:-
xg;g[jy; thf;FK:yk; ".d;W1309/2008 k; njjp gfy; 11/00 kzpf;F. nkl;Lg;ghisak; fhty;
epiyaj;jpy;. bghpaehaf;fd;ghisak; fpuhk eph;thf mYtyh; uh\$;Fkhh; 50. j/bg/
kija;aft[z;lh; vd;gtUk;. gj;jpug;gd; fpuhk cjtpahsh; bghpaehaf;fd;ghisak; Mfpnahh; 1/
yl;Rkzd; 26. j/bg/ fpUc&z;zd;. 32 tpndhgh mwpbthsp efh; NO.4, tPughz;o. 2/v!;/uh\$h
28 j/bg/rt[hpKj;J.

282/10A n\$hjpg[uk; Kjy; tPjp. bghpaehaf;fd;ghisak; ,th;fspy; yl;Rkzd; vd;gthpd;
thf;FK:yj;Jld; epiyaj;jpy; M\$h; gLj;j nkw;go vjphpfis bghpaehaf;fd;ghisak; fhty;epiya
Fw;w vz;/452/08 U/S302IPC & 380 IPC tHf;F rk;ge;jkhf ifJ bra;Jk; nkw;go rhl;rpfs;
1/uh\$;Fkhh; 2/gj;jpug;gd; ,th;fs; Kd;dpiyapy; tprhhpf;f ,jpy; 2tJ vjphp uh\$h vd;gth;
12/45 kzpf;F. ve;jtpj Jhz;LjYk;. mr;RWj;jYk;. Mir thh;j;ija[k;. ,y;yhky; jhdhnt Kd; te;J
brhd;d xg;g[jy; thf;FK:yk; gpd;tUkhW/ ////////////// vjphp uh\$h vd;gthpd; xg;g[jy;
thf;FK:yj;jpd; bjhlh;r;rp/ (gf;fk; - 5) eh';fs; ,uz;L ngUk; n\$hjpg[uk; kzpafhuh;
Mfpathplk; ,Utia[k; fhg;gw;w brhd;ndhk;/ mth; yl;Rkzdplk; thf;FK:yk; th';fpf; bfhz;L
v';fis fhty; epiyak; M\$h;gLj;jpdhh;/ vd;id fhty; mjpfhhpahfpa eP';fs; ifJ bra;J
tprhhpf;f. ehd; yl;Rkzdplk; th';fpa U:/5500- y; jz;zp moj;J bryt[bra;jJ nghf kPjKs;s
gzk; U:/3200- I j';fspk; M\$h;gLj;Jfpnwd;/ eP';fs; vd;idf; Tl;og;nghdhy; rk;gt ,lj;ija[k;.
brhj;Jf;fis kiwj;J itj;j ,lj;ija[k;. eifia mlkhdk; itj;j filiaa[k; milahsk; fhl;Lfpnwd;/'". (sd.)
K.yl;Rkzd; (sd.) rPdpthrd; (sd.) 1.AM.Rajkumar fhty; Ma;thsh; 13.09.2008
bghpaehaf;fd;ghisak;. (sd.) 2. G.gj;ug;gd; nfhit."

14. A perusal of the confession statements of both the accused under Exs.P.6 and P.7 would show that Ex.P.6 [confession statement of A1]. was signed by A2 and Ex.P7 [confession statement of A2]. was signed by A1. Hence, it is clear that the above confession statements have been recorded without following any procedure and that the investigating officer, without reading the documents, has obtained the signature from A.1 and A.2. Hence, the confession statements, which were not voluntarily given by A.1 and A.2, are totally not acceptable one. In this backdrop, this Court finds much force in the contention of the learned counsel for the appellants that the alleged recovery of the M.Os.8 to 11 under the Mahazars are created by the police. The admissible portion of confession Exs.P.6 and P.7 are

doubtful and the same cannot be relied upon.

15. This Court is of the view that since there was an error and contradiction in the confession statements as stated above, the alleged recovery of the material objects on the basis of confession also cannot be relied upon and thus, the prosecution has not proved its case beyond all reasonable doubt. When the prosecution fails to prove the admissible portion of the confession given by A.1 and A.2 as true, the alleged recovery made by the police on the basis of above said Exs.P.6 and P.7 confessions also falls to ground. In the case on hand, the trial court has disbelieved the confession statements said to have been given by the appellants to the VAO. Once the confession statements Exs.P.6 and P.7 are rejected, then the subsequent recovery based on such confessions also falls to ground. P.W.1, son of the deceased, in his complaint-Ex.P.1 has not stated any identification mark i.e., about the model of the gold chain-M.O.9 which was alleged to have been recovered from Muthoot Finance. During the course of examination, M.O.9-gold chain was not shown to P.W.1 to identify the same as that of his mother. Whenever any property is said to be stolen and if it is marked, the same should be shown to the person concerned, after recovery, by the Investigating officer in order to ascertain the fact whether the said recovered property belongs to the person concerned. Insofar as this case is concerned, P.W.1 has stated in his evidence that a gold chain was stolen from his mother/deceased. If that be so, after recovering the same from the accused, it should be shown to P.W.1 and he should identify the same as that of his mother. But in this case, the recovered gold chain-M.O.9 was not shown to P.W.1 for identification during his examination in chief. Hence, the prosecution has not proved its case through the recovery. Hence, the judgment cited by the learned Additional Public Prosecutor will not be applicable to the facts of this case.

16. It is well settled in a catena of decisions of the Hon'ble Apex Court that the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. The Hon'ble Apex Court has, in BODH RAJ @ BODHA AND OTHERS Vs. STATE OF JAMMU AND KASHMIR reported in AIR 2002 SUPREME COURT 3164 in paragraphs 10 and 11, held that:- "..... 10. It has been

consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. [See Hukam Singh V. State of Rajasthan [AIR 1977 SC1063; Eradu and others V. State of Hyderabad [AIR 1956 SC316; Earabhadrapa V. State of Karnataka [AIR 1983 SC446; State of U.P. V. Sukhbasi and others [AIR 1985 SC1224: [1985 CrI.LJ1224; Balwinder Singh V. State of Punjab [AIR 1987 SC350; Ashok Kumar Chatterjee V. State of M.P. [AIR 1989 SC1890. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram V. State of Punjab [AIR 1954 SC621, it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt. 11. We may also make a reference to a decision of this Court in C.Chenga Reddy and others V. State of A.P. [1996]. 10 SCC193 wherein it has been observed thus:- ".In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....".

17. As per the above citations, the present case is based upon the circumstantial evidence. The prosecution has to prove each and every link connecting to the circumstances of the case. But in the instant case the prosecution has not proved the chain of circumstances and the confession and recovery. Hence, the prosecution has not proved the case beyond all reasonable doubt.

18. The next line of contention raised by the learned counsel for the appellants is that the name of the second accused was not stated in Ex.P.1-complaint and Ex.P.16-FIR. Both in the complaint and in the FIR, the name of A1-Lakshmanan,

alone was mentioned and there is not even an iota of evidence to prove that A2 is involved in the alleged occurrence of committing the murder of the deceased. But P.W.2 in his chief examination, has stated that he saw A1 entering into the house of the deceased at 1.30 p.m. on 11.09.2008 and after half-an-hour, he saw both A1 and A2 coming out of the house. P.W.1, in his evidence, has also stated about P.W.2 mentioning about the names of both the accused. But, the name of the 2nd accused is found missing both in the complaint and in the FIR. So, there is some force in the arguments of the learned counsel for the appellants and no weight can be given to the prosecution version.

19. Further, in the examination, P.W.1 had deposed as follows:- ".mg;ng hJ nfh;InghJ rhl;rp g[Unrhj;jkd; vd;gth; md;iwa jpdk; kjpak; Vw;fdnt vjph; jpirapy; thfd';fSf;F chpa rPl;L fth; ijf;fpd;w fil itj;jpUe;j yl;Rkzd; rk;gtj;jpw;F xU ,uz;L khjj;jpw;F Kd;ghf fhyp bra;J tpl;L ngha;tpl;lhh;/ g[Unrhj;jkd; yl;RkzDk;. uh\$Dk; kjpak; 2 kzpf;F tPl;Of;Fs; ng hddhh;fs;/ mg;ng hJ yl;Rkzd; jiyapy; fUg;g[fyh; bjhg;gp mzpe;J ,Ue;jjhft[k; gpwF jpUk;g 2 kzp RkhUf;F2ngUk; mtru mtrukhf btspna te;jjhft[k; mg;ng hJ yl;Rkzd; jiyapy; bjhg;gp ,y;iy vd;W mth; vd;dplk; brhd;dhh;/'".

20. P.W.2 specifically noted that A.1 entered into the house wearing a black colour cap on his head and on his return from the house, the said cap was found missing. But he did not say that A.1 and A.2 were returned with wooden log. According to the prosecution case, M.O.4-wooden log which was allegedly used for committing murder of the deceased Thulasiammal, was not found in the house of Thulasiammal. Only M.O.1-cap and bloodstained white jacket [blouse].-M.O.2 alone were found in the place of occurrence. But the wooden log was not available. According to the prosecution case, the wooden log was recovered from out of the nearby place i.e., from the bushes in the Murugesan colony. This fact also creates some reasonable doubt on the evidence produced on the side of the prosecution that the alleged weapon used for committing the crime was not at all recovered from the place of occurrence or if it is recovered from some other place, there is no explanation offered on the side of the prosecution.

21. Further, there is no explanation offered by the learned Additional Public Prosecutor that even though the bloodstained jacket [blouse]. was recovered from

the place of occurrence, it has not been explained as to why it was not sent for the chemical examination. The reason for not sending the bloodstained cloth, viz., the white colour jacket [blouse]. recovered from the place of occurrence and not offering of any explanation on the side of the prosecution, also creates reasonable doubt on the case of the prosecution. Whenever any bloodstained property is recovered from the place of occurrence, it should be sent to chemical analysis for examination. In the instant case, the bloodstained white jacket [blouse].-M.O.2 was recovered from the place of occurrence but the same was not sent to chemical examination to ascertain whether the blood stains found in the said material object was that of the deceased or somebody. It creates a serious doubt. So, the above arguments of the learned counsel for the appellants that non-sending of the bloodstained white jacket [blouse]. to the chemical examination also creates reasonable doubt in the case of the prosecution.

22. In view of the above stated discrepancies, this Court is of the considered view that the prosecution has miserably failed to bring the nexus of these appellants with the crime, and thus there are reasonable doubts to which benefit they are entitled to. Hence the appellants are entitled for acquittal.

23. In the result, both the criminal appeals are allowed setting aside the judgment of conviction and sentence passed by the trial Court in respect of the appellants/A-1 and A-2, and they are acquitted of all the charges levelled against them. The fine amounts, if any, paid by them, shall be refunded to them.

24. It is reported that the appellants are in jail. Hence, the appellants/accused are directed to be set at liberty forthwith, if they are not required in connection with any other case. Index : Yes (V.D.P.,J.

) (G.C.,J.

) Website : Yes 18.03.2014 jrl To 1. The Additional District and Sessions Judge, Fast Track Court No.3, Coimbatore.

2. The Inspector of Police M1- Periyanaickenpalayam Police Station Coimbatore District.

3. The Public Prosecutor High Court, Madras. V. Dhanapalan, J.

and G. Chockalingam, J.

Jrl CRL.A.Nos.24 of 2012 and 844 of 2011 18.03.2014

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