

Sam Antony Danasekaran Vs. the State

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Court : Chennai

Decided On : Feb-08-1991

Reported in : 1992CriLJ474

Judge : K.M. Natarajan and ;K. Swamidurai, JJ.

Appeal No. : Crl. Appeal No. 191 of 1985

Appellant : Sam Antony Danasekaran

Respondent : The State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : N. Meenakshisundaram, Adv.

Judgement :

Swamidurai, J.

1. The first accused is SC 151 of 1984 on the file of the learned Sessions Judge, Ramanathapuram at Madurai, is the appellant. He was convicted by the learned Sessions Judge u/S. 376 read with 511, I.P.C., and sentenced to undergo rigorous imprisonment for one year and also to pay a fine of Rs. 250/- in default to undergo rigorous imprisonment for three months. The appellant was also convicted for an offence u/S. 302, IPC, and was sentenced to imprisonment for life and also to pay a fine of Rs. 3,500/- in default to undergo rigorous imprisonment for one year. The

appellant was also convicted u/S. 201 IPC., and sentenced to undergo rigorous imprisonment for a period of one year and also to pay a fine of Rs. 250/- in default to undergo rigorous imprisonment for three months and all the sentences were directed to run concurrently. If the fine amount of Rs. 3,500/- was paid by the appellant, the same was directed to be paid to P.W. 8 Thangammal. The appellant is challenging the findings of the learned Sessions Judge in this appeal.

2. Originally there were three accused in this case. The first accused is the appellant and he is son of the accused 2 and 3 who are Dr. Rathinam and Dala Rathinam respectively. The accused 2 and 3 were acquitted by the learned Sessions Judge.

3. The case of the prosecution as found from the evidence of prosecution witnesses, briefly stated is as follows :- Pappa, aged about 12 years a minor girl was working as servant in the house of the accused 2 and 3. The first accused and his younger brother, who was the juvenile accused had committed rape on Papa at about 5 p.m., on 7-8-82 and caused her death by pouring kerosene and setting fire on her body. P.W. 1 Azhagumalai is a student in Diploma Course in Tiruchi Politechnic. He was a resident of Thirumangalam. About two years prior to the occurrence i.e., on 7-8-82, he came to Thirumangalam for giving an application to Politechnic at Tiruchil. This witness had turned hostile while he was examined in the lower court. P.W. 2 Jeyaprakash was working in the fruit shop belonging to Akbar P.W. 4. P.W. 2 knew P.W. 1 previously when P.W. 1 was working in the shop of P.W. 4. P.Ws. 1, 2 and 3 were working in the fruit shop of P.W. 4. At about 5-30 p.m., on 7-8-1982 the first accused came to the shop and called P.W. 1 stating that he wanted to speak with him about an important matter. P.W. 1 replied that there was crowd in the shop and that he would come after sometime. The first accused used to come to the shop of P.W. 4 and he used to meet P.W. 1 and speak. The first accused also used to bring colour fishes and keep them in the shop of P.W. 4 and take them away thereafter. The first accused insisted that he had got an important matter to be told to P.W. 1 and that P.W. 1 could come back within two minutes. P.W. 2 also asked P.W. 1 to go with the first accused. P.W. 1 was hesitating. P.W. 2 asked P.W. 3 to look after the shop and he took P.W. 1 and came out. Then they went a little distance. Then P.W. 1 asked the first accused as

to what was the matter. The first accused hesitated to tell him since P.W. 2 also was present. P.W. 1 told the first accused that P.W. 2 also is their friend and that he could tell them frankly. The first accused then told them that at about 3 p.m., on that day, he and his brother (juvenile accused) and his parents (second and third accused) went to Madurai in a car and when the car reached Madurai Bus stand, the first accused told them that he wanted to see Video Casette and got a sum of Rs. 10/- and that the first accused and his younger brother got down from the car and came to the city bus stand, boarded a bus and reached Thirumangalam. Then they went to their house and found the servant girl Papa alone in the house. The first accused thereafter told P.W. 2 that after the milk man left the house and after asking his younger brother to find out whether anybody was coming to their house, he called the servant girl for sexual intercourse and on her refusal, he promised before the Jesus Picture that he would marry her and in spite of it the girl did not concede and so he took the girl forcibly and laid her near the bathroom and raped her that thereafter the younger brother also raped her and the girl became giddy and there was also bleeding from her vagina and he called P.W. 1 also. P.W. 1 told the first accused that this is a very serious matter and that he need not tell P.W. 1 further and that he should tell his parents and look after himself and so saying P.W. 1 sent the first accused away from that place. Then P.W. 2 brought P.W. 1 to the shop of P.W. 4. The 1st accused left that place. Then at about 6 p.m. when he went near the railway station, he saw the first accused who was there for getting into the train. Then P.W. 2 asked him as to what had happened relating to the affair of the girl for which the first accused replied that he and his younger brother took the girl to the lavatory and poured kerosene oil on her and set fire and that he had also kept the kerosene tin near her side. This he had done to create an impression that Pappa had committed suicide and he left that place saying that he was going by rail to the house of his aunt. Then P.W. 2 heard that the servant girl in the house of the doctor opposite to his shop had died by pouring kerosene oil and setting fire. At that time P.W. 1 told P.W. 2 that as informed by the first accused earlier, it appears that the first accused had set fire on the servant girl. Then P.W. 2 advised P.W. 1 not to tell this matter to any one and thereafter, he was examined by the police.

4. P.W. 3 Mohammed Usuf was working in the shop of Akbar P.W. 4 at Thirumangalam Bus stand. On the date of the occurrence, he was attending to his business. At that time P.Ws. 1 and 2 were also attending to their work in the shop. At 5.30 p.m., the first accused came to his shop and he wanted P.W. 1 to come with him for talking for five minutes. P.W. 1 replied that there was crowd in the shop and that he could not come at that time. Again the first accused called out P.W. 1 to accompany him. Then P.Ws. 1 and 2 went out of the shop for a while with the first accused and P.W. 3 alone was attending to the business. After ten minutes, the first accused left the place and P.Ws. 1 and 2 came to the shop back. But P.Ws. 1 and 2 did not tell him as to what they had talked with the first accused.

5. P.W. 4 Akbar is the owner of the fruit shop at Thiruvannamiyur bus stand. On the date of the occurrence, P.W. 2 and 3 were working in his shop. P.W. 1 also was an employee then in his shop. He did not say anything about the case of the prosecution excepting his evidence that P.Ws. 1 to 3 were employees in his shop. P.W. 5 Lakshminarayanan is a native of Thirumangalam. He knew the family of the accused and also the deceased Pappa. On 7-8-1982 at about 5 p.m., he was passing by the house of the accused in order to reach his house. Then he saw the accused 1 and 2 standing at the entrance of the house of the accused. At about 8 p.m., on the same date, since he felt fever, he went to the house of the second accused who was a doctor. At that time, one Sundaram Pillai (P.W. 6) came to the house of P.W. 5 in connection with his personal affairs. Both of them went to the house of the doctor the second accused. P.W. 5 alone went into the house of the doctor by calling him. Then, P.W. 5 found the second accused pouring water from a bucket and the third accused (wife of the second accused) cleaning the house with a broomstick. At that time, P.W. 5 felt smell of blood in the verandah. The Juvenile accused was also standing and he was found amazed. P.W. 5 told the doctor that he was not feeling well and the doctor replied that he was then engaged and asked him to go. Then this witness went out of the house of the doctor. Sundaram Pillai P.W. 6 asked him whether the doctor gave him any injection for which this witness replied that when he went inside the house, the doctor was pouring water from a bucket and that the doctor replied that he would not attend him and asked him to go out. Then Sundaram Pillai P.W. 6 also left that place and this witness returned to his house. At 9 p.m., police party came to the

house of the second accused and there was also a crowd and this witness also went to the house of the doctor with an anxiety to see as to what was the matter. Then there was a talk in the crowd that the servant girl committed suicide by pouring kerosene oil on her body in the house of the doctor and this witness also entered into the house of the doctor to verify the matter. The Inspector of Police was visiting the place of occurrence and the Inspector of Police prepared an observation mahazar, Ex. P. 1, in which this witness and Ponniah were asked to attest. This witness saw the dead body of Pappa in the lavatory and he also noticed burn injuries in some parts of the body. There were also bloodstains near the place where the dead body was found. There were also bloodstains in the lavatory. He noticed a broomstick and also a brush used for cleaning the lavatory. He also noticed bloodstains on the abovesaid articles. There was also a kerosene tin of 5 litres, capacity and there was about 3 lits. of kerosene oil in the same. There was also a fish breeding tub nearby. The Sub Inspector of Police held inquest over dead body of the deceased in the presence of witnesses and this witness was not examined at that time. The decision of the panchayatdars is that this was a suspected case of murder. The Deputy Inspector of Police seized the door of the lavatory M.O. 1, kerosene tin M.O. 2, broom stick M.O. 3, brush M.O. 4, aluminium vessel M.O. 5 and partly burnt skirt M.O. 6 in the presence of this witness under Ex. P. 2 mahazar and in which this witness and Ponniah attested. This witness also informed the Deputy Inspector of Police P.W. 22 about what he had seen in the house of the second accused prior to seizure of the material objects.

6. P.W. 6 Sundaram Pillai, a resident of Thirumangalam deposed that he knew the house of the second accused and also the deceased Pappa. When he went to the house of P.W. 5, P.W. 5 was about to start at 8 p.m., on 7-8-1982. P.W. 5 informed him that he was feverish and so he wanted to go to the house of the second accused. P.W. 6 also accompanied him and stood outside the house and P.W. 5 alone went to the house of the doctor, the second accused. P.W. 5 returned immediately after two minutes from the house of the doctor stating that the doctor could not attend on him since the house of the second accused was then being washed. P.W. 5 also told P.W. 6 that he felt smell of blood in the house of the doctor. P.W. 7 Raman is a resident of Thirumangalam doing milk vending

business. He used to supply milk to the house of the doctor the second accused and he knew the deceased Pappa. He would state that on the date of occurrence at about 4.65 p.m. P.W. 7 (went) to the house of the second accused for supplying milk and he pressed the switch of the alarm bell and the deceased came out and received the milk from him. This witness did not know as to who were there in the house at that time. P.W. 8 Thangammal is the mother of the deceased. She was living at Pannigundu. The deceased was working in the house of the accused for the Past six months prior to the occurrence. The deceased was admitted as a servant in the house of the second accused on the recommendation of the priest of Nirmasla Ashram. P.W. 8 went to the house of the second accused on the previous day of the occurrence to see her daughter. She had also taken Chicken and gave it to the third accused, the wife of the second accused. The third accused did not allow the deceased to speak with her mother. P.W. 8 also hurriedly sent her back to her village. On the next day (being a Saturday) at about 3 a.m., the second accused came to her house in a Car and called her to see Pappa who was admitted in the hospital due to injury sustained by her by falling in the lavatory. Then P.W. 8, her father-in-law Arumainayagam, her brother-in-law Masilamani and her sister Pandiammal went in the car along with the second accused to the hospital at Thirumangalam. There till about 9 a.m. in the morning, they could not see Pappa. Thereafter, they saw the deceased in the mortuary and they found burn injuries on the body. This witness noticed bloodstains on her private Parts, and thigh and that the body was taken to Headquarters hospital. P.W. 9 Pandiammal is related to the deceased. She would state that about 1 1/2 months prior to her deposing in the lower court when she was in the hospital for treatment, the deceased had gone there to see her. At that time, the deceased is stated to have told P.W. 9 that she was not willing to work in the house of the accused. When P.W. 9 questioned the deceased as to why she was not willing to work in the house of the accused, the deceased, told her that the third accused was treating her cruelly often and abusing her. The question relating to this portion of the deposition was objected to by the learned counsel for the accused in the trial court and this was overruled and the answer was elicited by the learned Sessions Judge. The deceased Pappa also stated to have told P.W. 9 that since the two sons of the doctor the second accused were troubling her to yield to there

sexual desire, she was not willing to work in their house. The question relating to this portion of deposition of P.W. 9 was also objected to by the learned counsel for the accused and this objection was also overruled by the learned Sessions Judge. P.W. 9 told Pappa that if that was the case she would take her to her house. At that time, the deceased had not attained puberty and even till her death, she had not attained puberty.

7. P.W. 10 Dr. Thangam was the Civil Assistant Surgeon in the Government Hospital, Thirumangalam. On 31-8-1982 at 2.35 a.m. she examined the first accused on a requisition received from the police and found the following injuries :-

1. An abrasion of 1/2 cm., breadth found throughout the length of upper arm till elbow.
2. A contusion of 2 x 3 cm., in right upper arm.
3. A contusion of 2 x 2 cm., in right parietal region of scalp.
4. An abrasion of 1/2 cm., circumferential wound in both right and left thumb.
5. An abrasion of 1 cm x 1/2 cm. in lumbar region of back.
6. An abrasion of 1/2 cm breadth in left thigh from inguinal region to just above knee'.

On examination of his scrotum P.W. 10 found both testicles developed completely. His penis developed completely. Prepuce normal. Prepucial skin normal. No tear anywhere in scrotum. No seminal stains found in his penis. P.W. 10 referred this case to Dr. James Pandian because the first accused was a male. P.W. 10 reserved her opinion. Ex. P. 3 is the certificate issued by P.W. 10.

8. P.W. 11 Dr. James Pandian, then Assistant Surgeon in the Government Hospital, Thirumangalam would state that on 31-8-1982 at 3.10 p.m., he was called by the duty Medical Officer P.W. 10 to examine the first accused. He examined the first accused and found the penis normal and prepuce could be easily retracted. There were no healed ulcer or scar seen over glans. No Ulcer or scar were also seen over frenulum. Ex. P. 4 is the accident registered original

extract issued by him. Subsequently, he examined the juvenile accused Jeyachandran on 31-8-1982 at 5.30, Ex.D. 1 is the memo sent by the Inspector of Police for examination of the first accused. P.W. 11 knew the second accused Dr. Rathinam who was the Chief Medical Officer in Government Hospital at Thirumangalam.

9. P.W. 12 Mahalingam, P.W. 13, Sonai and P.W. 14 Kali were treated as hostile since they did not support the case of the prosecution.

10. P.W. 15 Ibrahim Shariff the then Assistant in the court of Judicial Second Class Magistrate, Thirumangalam, received M.Os. 1 to 6 in this case along with a requisition. Ex. P. 5 from the Inspector of Police on 20-8-1982 for sending them to the Chemical Examiner. Accordingly, he sent the same to the Chemical Examiner under Ex. P. 6 and received Ex. P. 7 the report of the Chemical Examiner. Ex. P. 8 is the Serologists report.

11. P.W. 16 Dr. Cycilia Cyril, the then Associate Professor in Forensic Medicine, Madurai Medical College would state that on 8-8-82 on receipt of requisition at about 3-15 to conduct autopsy over the dead body of the deceased, he went to the mortuary room and was about to start the examination. At that time Dr. Baskaran, the duty doctor and Santhanakrishnan, Technician came from the department and asked P.W. 16 not to do the post mortem. They told that they had received telephone call from the professor of Forensic Medicine that Thirumangalam Police Station is outside the Madurai Corporation Limit and hence, requisition should be received only from the Superintendent of Police and that as soon the requisition was received from the Supdt., of Police, she could do the post mortem examination. Therefore, P.W. 16 informed the Sub-Inspector of Police, Thirumangalam who was in the mortuary at that time and asked him to get the requisition from the Superintendent of Police and also informed him that she would wait upto 5 p.m., that day to do the post mortem. She waited upto 5 p.m., in the mortuary. At that time she noticed the appearance of the body as one poorly nourished female body, breasts not developed. Pubic hair was not present and there were dried blood stains starting from the vaginal orifice and going along the inner aspect of left thigh, left knee and left leg. The abdomen below the umbilicus

showed very little area of burns. There were no burns along with inner aspect of left thigh, left knee and left leg. At 5 p.m., since the requisition was not brought by the Sub Inspector of Police, she left for her home. Ex. P. 9 is the requisition to do the post mortem of the dead body which she returned to the Sub Inspector of Police. On 9-8-1982 at about 8-30 a.m. Ex. P. 10 requisition was received by P.W. 16. She took the requisition, proceeded to the Department to sign attendance register and asked the technician Narayanan to inform the professor that the requisition from the Superintendent of Police had come and she was proceeding to the mortuary to do the post mortem. While she waited so, she received telephone instructions from the professor not to do the postmortem. Hence, she handed over the requisition to the Inspector of Police. To a question put by the public prosecutor in the court below as to the cause of dried bloodstains which P.W. 16 noticed on the vaginal part of the deceased, the counsel for the accused objected. The learned Sessions Judge overruled the objection and then the doctor P.W. 16 replied that the bleeding, leading to dried bloodstains over the vaginal orifice of the dead body and the inner aspect of the left thigh, left knee and left leg, could be caused by a sexual assault. To question put by the lower court whether the presence of dried blood on the dead body could be due to sexual assault on that part P.W. 16 replied that it is possible on the vagina of the deceased girl. P.W. 16 has also stated that haemorrhage in uterus could be due to congestion menstruation and it is best confirm by a microscopic examination. P.W. 16 has also stated that no sexual assault in a minor girl is possible without rupture of hymen and in which case also, there will be profuse bleeding from erectile tissues in vagina and sexual inter-course in the case of a girl could not take place without rupturing hymen. In which case, the laceration in the hymen will bleed upto a period of 48 hours. P.W. 17 Dr. R. Baskaran was the Tutor in Forensic Medicine, Madurai Medical College, Madurai spoke about the fact that when P.W. 16 was about to do post mortem on the dead body of the deceased a telephone message was received from Dr. Sambon David P.W. 18, Professor of Forensic Medicine, Madurai Medical College not to do the post mortem in the absence of requisition from the Superintendent of Police, Madurai which he informed to P.W. 16. At that time P.W. 17 observed the dead body and found blood was trickled from the vagina to the inner aspect of left thigh and left knee joint and over left leg.

12. P.W. 18 Dr. Sambon David was the Professor of Forensic Medicine, Madurai Medical College at Madurai. It was he who conducted autopsy over the dead body of the deceased on receipt of a requisition Ex. P. 10 from the Superintendent of Police, Madurai South. He commenced the Post mortem at 9-30 a.m., on 9-8-1982 and found the following features :

External findings :

Superficial burns involving the whole body with singeing of hair of the head. Elebs of various sizes with peeling off the cuticle seen on the face, front of chest and abdomen, the back, the upper and lower limbs. Charring with blackening the tissues and reddening of the skin seen. Superficial splitting of the skin (heat ruptures) seen on the left groin and both elbows. An abrasion 3 x 2 cms. with dried blood seen on the left side of the ankle (over the left malleous). No other external injuries seen in the body.

Internal findings :-

Peritoneal cavity empty. Pleural cavities empty. Pericardium : contained straw coloured fluid. Heart : Right side chambers contained 10 ml., of dark coloured fluid; left side; empty. Coronary vessels : Patent.

Lungs; Both lungs markedly congested and oedematous. Hyoid bone : Intact : Trachea and Bronchi contained Black soot particles with frothy mucous contained 200 grams of partly digested rice mixed with tomato peels and (Vernacular omitted) leaves. No definite smell could be made out. Mucosa normal. Intestines contained 50 ml. of yellowish fluid. No definite smell could be made out. Liver spleen and kidneys : markedly congested.

Bladder : Empty. Uterus normal. The endometrium was thick and haemorrhagic. Hymen : intact. Brain : Superficial vessels prominent and filled with dark fluid blood. No fracture of any bone made out'.

P.W. 18 was of the opinion that the deceased would appear to have died of shock as a result of superficial burns involving the whole body. Ex. P. 11 is the post mortem certificate issued by P.W. 18. According to P.W. 18 that the superficial

burns of 95% to 100% is necessarily fatal and the death must have been instantaneous. P.W. 18 found that the body was well nourished and the deceased was aged about 12 years.

13. P.W. 19 Narayanan is the Technician in the Medical College, Madurai. He was called by another technician Santhanakrishnan stating that P.W. 16 Cycilia Cyril had received a requisition in this case and that P.W. 19 also should come along with him. P.W. 19 accordingly went along with Santhanakrishnan to P.W. 16. P.W. 16 informed him that she had received a requisition and that she had to go for conducting autopsy. P.W. 19 told her that he would inform the professor P.W. 18 about it and then come. P.W. 19 informed P.W. 18 through phone and P.W. 18 informed him to bring the requisition and also the post mortem rough notes to the mortuary. P.W. 19 told P.W. 16 as what P.W. 18 had told him. Then after making an entry in the register about the requisition, he went to the mortuary. P.W. 18 conducted autopsy. His duty was that whenever he received information for conducting authopsy, he had to convey the same to the professor. Accordingly, he did so on that day also.

14. P.W. 20 Muniasami is the Police constable who was in charge of the dead body on 9-8-1982 at the time of post mortem. Prior to that on 7-8-82 he had accompanied Sub Inspector of Police and the Police party to the house of the second accused and he found the dead body with burn injuries lying in the lavatory. He found bloodstains on the left thigh and also on private parts of the deceased and also a tin with 2 1/2 lits, of kerosene oil and a broom stick. They were recovered by the police. An observation mahazar was also prepared under Ex. P. 1. The photographer Nagarajan P.W. 21 was brought and he took out photos of the deceased. Then he received requisition from the Inspector of Police for conducting autopsy and also the dead body and he took the same to Thirumangalam Government hospital and entrusted the body with the doctor. Then on the next day i.e., 8-8-82 at the request from the Government Hospital, Thirumangalam, he took back the dead body and entrusted the same with the Government Hospital, Madurai for conducting autopsy. On 9-8-1982 at 9-30 a.m., P.W. 18 conducted autopsy. After that the body was entrusted with P.W. 20 who in turn entrusted the same to her relatives.

15. P.W. 21 Nagarajan is the Photographer. He would state that on 7-8-82 at 11 or 11-30 p.m., at the request of the police he went to the house of the second accused at Jawahar Nagar, Thirumangalam where he found the body of the deceased in the lavatory with burn injuries. He took photos and M.Os. 7 & 8 are the negatives. M.O. 9 is the photo of the deceased. M.O. 10 is the negative of M.O. 9, M.O. 11 is the another photo to the deceased taken outside the lavatory and M.O. 12 is the negative of M.O. 11. M.O. 13 is another photo of the deceased and M.O. 14 is the negative of M.O. 13. M.O. 15 is the photo of bloodstains found on the door of the lavatory and M.O. 16 is the negative of M.O. 15.

16. P.W. 22 R. Murugesan was the Deputy Inspector of Police, Thirumangalam Town Police Station at the relevant time. When he was on duty on 7-8-82 at about 8-30 p.m., the second accused appeared before him and gave a report Ex. P. 12 and P.W. 22 registered a case on the basis of that report in Cr. No. 297/82 u/S. 174, Cr.P.C. Then he prepared the first information report, the copy of which is Ex. P. 13. Then he sent express reports to the higher Police Officials and also to the judicial Second Class Magistrate, Thirumangalam. Then he took up further investigation and he went to the place of occurrence with Head Constable 2377 and P.C. 1273 at about 8-50 p.m. He reached the place of occurrence at 9-00 p.m. He found the body of the deceased in the lavatory and notice burn injuries on her body. He also noticed bloodstains on the left knee of the deceased. The skirt also was found brunt. He prepared an observation mahazar Ex. P. 1 in the presence of P.W. 5 and Ponniah who attested the same. He also prepared a rough sketch under Ex. P. 14. Then he held an inquest and Ex. P. 15 is the inquest report. Then he examined the accused 2 and 3 and also the juvenile accused Jeyachandran and witnesses P.Ws. 5, 7 Murugan and others and recorded their statements. Then he sent the concerned records through P.W. 20 to the Government Hospital, Thirumangalam along with the dead body for post mortem. Then he recovered M.O. 1 bath room door, M.O. 2 kerosene tin, M.O. 3 broom stick, M.O. 4 brush, M.O. 5 aluminium vessel and M.O. 6 burnt cloth under Ex. P. 2 mahazar in which he obtained the signatures of P.Ws. 5 and Ponniah. He found the Kerosene oil tin in a closed condition outside the lavatory and there was about 2 1/2 lits. of kerosene in the same. He did not notice any match box or burnt or unburnt match sticks. He was informed by the Government Hospital authorities Thirumangalam

that Post mortem could not be conducted in that hospital since the second accused was working in the said hospital and also there was objection by the Public that autopsy should not be conducted in the same hospital where the second accused was working. Then he gave a requisition Ex. P. 9 in person to the Professor of Forensic Medicines at Govt., Rajaji Hospital Madurai for conducting autopsy. Then she was informed by Dr. Baskaran P.W. 17, that the Professor was in her house and that he should get permission from her. Then he gave the requisition to P.W. 16 and requested her to conduct autopsy and P.W. 16 accompanied him at 3-30 p.m., to Rajaji Hospital, Madurai and saw the dead body. P.W. 17 also came there and saw the dead body. Then P.W. 16 made arrangements for conducting autopsy. Then P.W. 16 was informed by P.W. 17 that the dead body coming from outside Madurai Corporation limits had to be requisitioned by the Superintendent of Police for conducting autopsy and so P.W. 16 told him to bring requisition from the Superintendent of Police, Madurai. Accordingly, this witness went to the Superintendent of Police, Madurai at 6 p.m., and obtained Ex. P. 10. Then since the post mortem would not be conducted after 6 p.m. he left for his police station and informed the Inspector of Police. From the inquest held by him in the presence of panchayatdars and also from the statements recorded by him from the witnesses, he found that it was a case of suspicious death and that the accused 1 to 4 alone were responsible for the same. Then he examined P.W. 8 and P.W. 9 on 8-8-82 and recorded their statements. Then he sent the statements to the Inspector of Police, Thirumangalam for further investigation. P.W. 22 does not remember to have seen bloodstains on any other parts excepting the knee of the deceased. He has also noticed slight bloodstains on the private parts of the deceased.

17. P.W. 23 Madhanaguruswami was the Inspector of Police, Thirumangalam at the relevant time i.e., in 1982. On the orders of the Deputy Superintendent of Police, Thirumangalam, he took up investigation in this case on 16-8-1982 and he verified the records and sent express report immediately as it had not been sent already to the Judicial Second Class Magistrate, Thirumangalam and also to the higher authorities. Ex. P. 16 is the express report. He examined some other witnesses in this case. Then on the orders of the Superintendent of Police on 17-8-1982 he sent the case records for further investigation to Velusami, the

Inspector of the Police. On 9-8-1982, he along with P.W. 22 saw P.W. 16 at Madurai and P.W. 16 informed him that P.W. 18 was going to conduct autopsy over the dead body of the deceased. Then he went to the mortuary. Then P.W. 18 conducted autopsy.

18. P.W. 24 is Velusami, Inspector of Police, Madurai South. On the orders of the Superintendent of Police, he took up further investigation on 18-8-1982 and he verified the records. He inspected the place of occurrence at 9-00 a.m., that day. Then he also prepared a rough sketch showing the situation of the place of occurrence and other houses in the street under Ex. P. 17. He noticed buzy dogs and furious dogs in the compound of the house of the accused. Then he searched the house of the accused in the presence of Jayapaul and Virumandi. At that time, the third accused was present. Then he served a copy of search list on the third accused and obtained his signature. Then he examined P.Ws. 22 & 23 and recorded their statements. Then he examined P.W. 5 Ponniah, Raman, and P.W. 7 and other witnesses. As the witnesses narrated the very same thing, he did not prepare separate statements from them, since their statements were already recorded by the Inspector of Police. Then he gave instructions for sending material objects to the court for sending them for chemical examination. Then he examined Franchis, Thavamani. He did not record separate statements since they had already given very same statement to the Deputy Inspector of Police. He examined P.W. 8 and P.W. 9 on 9-8-1982 at Thirumangalam. Since P.W. 8 alone gave some more additional statements recording the occurrence, he recorded his statement alone. Then he examined P.Ws. 12, 13 and 15 at Anna Nagar, Madurai and recorded their statements and he sent the material objects to the court on 20-8-1982. Then he examined P.Ws. 20 and 21 and Head Constable Mahadevan at 21-8-1982 at Thirumangalam. Then he recovered material objects 1 to 7 and 16, namely, photos and negatives from P.W. 21 and examined some other witnesses on 25-8-1982. Then he examined P.Ws. 1, 2 and 3 on 26-8-82 and recorded their statements. Then on 30-8-1982 at about 10-30 p.m. when he called the first accused for examination near the railway station at Thirumangalam, the first accused attempted to run away. Then he arrested the first accused in the presence of witnesses Easudoss, Veeranan and the first accused gave a statement voluntarily, which was also recorded. Then the first accused was

brought to Thirumangalam Police Station and his person was searched. Then he was remanded to custody. Then at about 1-30 p.m., the offence was altered to one u/Ss. 326, 302, and 201, IPC, and he sent express report under Ex. P. 18 to the Judicial Second Class Magistrate, Thirumangalam and also to the higher Police Officials through P.C. 383. Then he sent the first accused at about 1-45 a.m., to the Government Hospital, Thirumangalam for examination. Then he arrested the juvenile accused at 3 p.m., near the City bus stop at Virudhunagar-Madurai road, Thirumangalam on 31-8-82 in the presence of witnesses Pandy and Raju and the juvenile accused also gave a confessional statement voluntarily and it was recorded and the witnesses attested the same. Then his body was searched. Then the juvenile accused was sent for medical examination. After Medical examination the juvenile accused was sent for remand. Then he sent requisition Ex. P. 5 to the Judicial Second Class Magistrate along with M.Os. with a requisition for getting a chemical report. Then he recorded Ex. P. 6 statement from P.W. 6 on the same date. The accused 2 and 3 had obtained anticipatory bail from the High Court on 4-9-1982. Then he recorded a statement from P.W. 18 on 13-9-1982 and also examined P.Ws. 10 & P. 11 and Doctor Parvathi on 20-12-1982 and P.Ws. 17 and 19 on 21-12-1982 and recorded their statements. P.W. 24 received the file in this case on 17-8-82 and from the files, he came to know that the investigation was kept without further progress between 9-8-1982 to 15-8-82. The Deputy Inspector of Police had been under suspension from 12-8-82. Then he filed the charge sheet in the Court of the Judicial Second Class Magistrate, Thirumangalam on 21-1-1983 against all the four accused under Ss. 326, 376, 302 and 201, I.P.C.

19. The accused 1 to 3 were questioned u/S. 313, Cr.P.C. with regard to the incriminating circumstances available against them from the evidence of prosecution witnesses. They individually denied the charges and pleaded not guilty. The accused examined three witnesses on their side as 1 to 3.

20. D.W. 1 A. Muthuanandam was the casualty Medical Officer at Government Rajaji Hospital, Madurai. He would state that on 8-8-1982 at 4 p.m., the dead body of Papa aged about 12 years, d/o. Ayyar of Pannikundu was brought to the casualty ward by P.C. 1273. The body was completely black in colour. He was not able to see any identification marks. He had noted burns on the body. D.W. 1

recorded his findings in Ex.D. 3 accident register. He was not able to see any blood stains or any injuries except as found in Ex.D. 3. The dead body was sent to the mortuary with the mortuary card prepared by him. According to him, three mortuary cards would be prepared and one of the cards would be pinned to the body and another would be sent to the mortuary. He had also signed in the mortuary card that was sent along with the dead body to the mortuary. From the casualty ward within 10 to 15 minutes, the dead body sent to the mortuary would reach the mortuary to be deposited there. D.W. 2 K. A. Francis was employed in customs Dept, in Madurai. He knew the members of the accused family. In short what he would state in his deposition is that on 7-8-1982 at 4.00 p.m., all the accused and himself were in the plot of the second accused at Anna Nagar, Madurai and thereafter, they went to the house of D.W. 2 at Pethaniapuram and were there up to 6-30 p.m., and the accused accepting his first accused left for Thirumangalam in their car only at 7-30 p.m. The first accused was in the house of D.W. 2 for the whole day of 7-8-82. D.W. 3 Ibrahim Sheriff was the Head Clerk in the Court of learned Judicial Second Class Magistrate at Thirumangalam during August, 1982. He would state that Ex.D. 4 is the true copy of the Express report sent to the Court regarding the alteration of offence to one u/Ss. 302, 376 and 201, IPC, from 174, Cr.P.C. in Cr. No. 297/82 of Thirumangalam Nagar Police Station.

21. Learned Sessions Judge after considering the evidence both oral and documentary and for the reason stated in his judgment, acquitted the accused 2 and 3 and found the first accused alone guilty of the offences u/Ss. 376 read with 511, I.P.C., 302, I.P.C. and 201, I.P.C. and convicted him as mentioned above. Aggrieved against the judgment of the lower Court, the appellant herein has preferred this appeal.

22. The point for consideration is whether the prosecution has proved its case beyond all reasonable doubt against the first accused/appellant herein

23. Learned counsel for the appellant contended that when the lower court is not prepared to accept the evidence of prosecution witnesses as against the accused 2 and 3 who are the father and mother respectively of the first accused and acquitted them, the very same scale has to be applied in appreciating the

evidence of prosecution witnesses as against the appellant also. Further he submitted that the juvenile accused in this case was also acquitted by the trial Judge. Learned counsel for the appellant also pointed out various discrepancies in the evidence of prosecution witnesses and submitted that their evidence is not worthy of acceptance. We shall now discuss the evidence of the witnesses in seriatum.

24. P.W. 1 turned hostile and his evidence is not helpful to the case of the prosecution. P.W. 2 Jeyaprakash was working in the fruit shop of Akbar P.W. 4 at the time of occurrence. The prosecution relied upon the evidence of witness for the alleged extra-judicial confession said to have been made by the first accused. The evidence of P.W. 2 is that the first accused came and informed him that he and his younger brother (jevenile accused) had committed rape on the deceased nearby the bath room and that the deceased became giddy as there was bleeding from her private parts. P.W. 2 told the first accused to inform the parents of the first accused about this. Then again at 6 p.m., P.W. 2 came near the railway station. At that time, the first accused came there to board the train and when P.W. 2 asked him about what happened to the incident which the first accused had told, P.W. 2 the first accused seemed to have replied that he and his younger brother carried the deceased to the lavatory, poured kerosene oil on her and set fire on the body. Further, the first accused told him that he kept the kerosene oil on her and set fire on the body. Further the first accused told him that he kept the kerosene tin nearby and also made it appear as if the deceased herself committed suicide of her own accord and so saying, the first accused left for his aunt's house by train. This evidence of P.W. 2 was attacked by the learned counsel for the appellant on the ground that this witness P.W. 2 did not inform this matter to the police immediately and that this witness was an agent of the Inspector Velusami from the days he being the Deputy Inspector of Police. Admittedly, P.W. 2 did not inform this matter to any one till he was examined by the police as found from his evidence in cross-examination. This appears to be very strange since this witness had not informed this matter which is of very serious in nature, to anyone else. Even the evidence of P.Ws. 3 and P.W. 4 could not be taken as corroboration to the evidence of P.W. 2 P.W. 3 is one of the servants working in the fruit shop of P.W. 6. The first accused did not tell anything about the incident to P.W. 3.

Therefore, the evidence of P.Ws. 3 & 4 cannot be taken to be corroborative evidence with regard to the alleged extra-judicial confession said to have been given by the first accused to P.W. 2. P.W. 5 Lakshminarayanan gave evidence with regard to the fact that when he went for treatment to the house of the second accused, the latter was found pouring water from a bucket and the third accused was found washing the floor with a broomstick. It is the admitted case that the deceased died in the house of the second accused and naturally the accused 2 and 3 might have been engaged in washing the bloodstains and from this it cannot be accepted that the first accused has caused the death of the deceased.

25. Learned Sessions Judge was not prepared to accept the evidence of prosecution in so far as the case against the accused 2 and 3 are concerned. Learned Public Prosecutor pointed out the evidence of P.Ws. 5 and 6. P.W. 6 has spoken to the fact that P.W. 5 went to the house of the second accused for treatment and P.W. 6 was standing outside and the evidence of P.W. 6 is that P.W. 5 told him that day since the house of the second accused was being washed and that the doctor the second accused asked P.W. 5 to go away. Therefore, the evidence of P.W. 6 is not helpful to the case of the prosecution. P.W. 8 the mother of the deceased came and saw the deceased subsequently in the hospital. Her evidence is that she noticed bloodstains on the thigh and private parts of the deceased. The evidence of P.W. 8 does not support the evidence of the medical witness P.W. 18, P.W. 9 deposed that when she had been admitted in the Govt. hospital Thirumangalam for treatment, the deceased who is related to P.W. 9 came to see P.W. 9 in the hospital and there, the deceased told this witness that the two sons of the second accused, namely, the first accused and the juvenile accused had been troubling the deceased for sexual intercourse and that the deceased was not willing to work in the house of the second accused. This answer from the mouth of P.W. 9 was objected to by the learned counsel for the accused appearing in the lower court. But in the cross-examination, this witness stated that she had not informed this matter to the second accused who was the Chief Medical Officer in the hospital and who treated P.W. 9. This witness also further deposed that she did not ask anything about this matter from the third accused nor did she inform the third accused that she would take the deceased back to her house. Admittedly, the deceased had not attained puberty till her

death. P.Ws. 12, 13 and 14 turned hostile and therefore, their evidence is not helpful to the case of the prosecution. Then there is the medical evidence available in this case which was much relied upon by the learned Public Prosecutor in support of the prosecution case. The evidence of P.Ws. 16 and 18 is contrary to each other. P.W. 10 Dr. Thangam, Casualty Medical Officer, in Govt. Hospital, Thirumangalam examined the first accused at 2-35 a.m. on 31-8-1982 when brought by H.C. 2237 and found the following injuries on the first accused.

1. An abrasion of 1/2 cm. breadth found throughout the length of upper arm till elbow.
2. A contusion of 3 x 3 cm., in right upper arm.
3. A contusion of 2 x 2 cm., in right parietal region of scalp.
4. An abrasion of 1/2 cm., circumferential wound in both right and left thumb.
5. An abrasion of 1 cm. x 1/2 cm in lumbar region of back.
6. An abrasion of 1/2 cm., breadth in left thigh from inguinal region to just above knee'.

Ex. P. 3 is the certificate issued by her. P.W. 10 referred the case of the first accused to Dr. James Pandian P.W. 11 because the first accused is a male and P.W. 10 had reserved her opinion. According to her, the injuries found on the first accused could have been caused on 30-8-82 by beating with lathies and kicking with booted legs. P.W. 11 Dr. James Pandian examined the first accused. Ex. P. 4 is the accident register original extract issued by P.W. 11. He had noticed no heeled ulcer or scar over glans, nor was there any ulcer or scar over frenulum and that therefore, he was of the opinion that there was no evidence of any intercourse on 31-8-82 i.e., the date on which he was called on by the duty Medical Officer P.W. 10 to examine the first accused. His evidence in cross-examination is that in the course of forcible sexual intercourse, the frenulum of the penis would be normally torn. This is the evidence available with regard to the examination on the person of the first accused by two doctors P.Ws. 10 & 11.

26. Then P.W. 16 Dr. Cycilia Cyril examined the deceased before P.W. 18 conducted post mortem examination. The evidence of P.Ws. 16 and 18 is contradictory to each other in several material particulars. The evidence of P.W. 16 is that no sexual assault on a minor girl is possible without rupture of hymen and in which case also there would be profuse bleeding from erectile tissues in the vagina. When a question put by the learned Public Prosecutor, in the lower court, P.W. 16, answered that the bleeding leading to dried blood stains over the vaginal orifice of the deadbody and the inner aspect of the left thigh, left knee and left leg could be caused by a sexual assault. Following the same, learned Sessions Judge also put a question whether it could have been due to sexual assault on that part for which P.W. 16 answered that it is possible on the vagina of the deceased girl. To another question put by the learned Public Prosecutor in the lower court as to what was the cause for uterine haemorrhage, P.W. 16 replied that haemorrhage in uterus could be due to congestion, menstruation and it is best confirmed by a microscopic examination. In the cross-examination P.W. 16 has deposed that she had not noted the further observation on the dead body in any notes or in any document as required by the Medical code in the observation and findings of Post-mortem. But she made observation over the dead body in her personal diary for her reference and she did not hand over that writing in her diary to the Inspector of Police who examined her. Further this witness also has stated in cross-examination that she did not inform the professor P.W. 18 that on the previous day on 8-8-1982 she had already made some observation over the dead body and therefore, she herself must do the post mortem. When a question put to this witness as to whether, it was possible that bleeding from vagina might be due to pathological or physiological causes, this witness replied in the affirmative. Unfortunately, this witness had not collected the blood found on the dead body for microscopic examination, as according to her, she did not touch the dead body of the deceased. A portion from Modis Medical Jurisprudence, Edition 13, page 19 was read out and when questioned that whether she would agree that it is not possible to state from the appearance of stains whether there are mensruated blood or from any other source, the witness replied in the negative and replied that it is possible to say from the stains of blood over the body, how it would come there. The evidence of this witness is not helpful because what all she had stated

was only from her memory. Admittedly when she has made observations over the dead body in her personal diary for her reference, she did not hand over it to the Inspector of Police, when the latter examined her. P.W. 16 has not given any acceptable reasons for not producing her personal diary in which only she has noted certain observations on the body of the deceased.

27. P.W. 17 Bhaskaran was the Tutor in Forensic Medicines, in Madurai Medical College at the relevant time. When he was in the Postgraduate room, he was informed by P.W. 16 of certain observations which he had noted on the dead body and found blood tricking from the vagina to the inner aspect of left thigh and left knee joint and over left leg. But this witness has not noted these observations, according to him in any register. P.W. 18 Dr. Sambon David, was the professor of Forensic Medicine, Madurai Medical Collage and he conducted post mortem on the body of the deceased. His evidence to a question put by the learned Sessions Judge is that when he did not post mortem, he did not find any dried blood over the vaginal part of the dead body or blood trickling down over the knee, left thigh and ankle of the deceased girl. This witness also has not taken vaginal smear for examination since he was not requested by the police to do so; nor did this witness suspect sexual intercourse at the time of post mortem examination. His evidence is that in cases of sexual assault of a girl or a woman, the physiological trauma would precipitate menstruation, if she is at the appropriate period of the menstrual cycle at that time. He further deposed that without some special tests mentioned in Modi, it is not possible from the appearance of the stain whether it is menstrual or nay other source. He further deposed that bleeding in vagina might be due to physiological causes or pathological causes. Physiological cause is menstruation. Pathological causes might be due to deceases such as tumours of the genital tracts. If the bleeding from vagina is due to sexual assault, the mucous membraine will be ruptured and the underlying blood vessel will also be damaged. But according to him, in this case, he did not see any rupture in the mucous membrane or the underlying blood vessels. In Ex. P. 10, there is absolutely no mention of the girl having been raped. According to him, in this case, medically there is no evidence of penetration by male organ and he could not think of penetration of the vagina by male organ for the following reasons :-

'1. The intact hymen and,

2. He could not make out any seminal stains. Usual onset of menstruation is 12 to 14 years, according to the conditions prevailing in our country. There may be suicidal tendency in girls during the pre-menstrual period or initial menstrual period due to depression and irritability. In re-examination, this witness is positive in his views that sexual intercourse is possible without rupturing the hymen in rare cases and the amount of injury to the hymen and genital canal depends upon the degree of disproportion between the genital organs of both parties and the violence used on the female and in rare cases of sexual intercourse, without rupture of the hymen, there will not be bleeding as there is no injury.

28. Learned Public Prosecutor relied upon the medical evidence of P.W. 16 whereas learned counsel for the appellant submitted that the evidence of P.W. 16 cannot be relied upon in preference to the evidence of P.W. 18 who conducted post mortem on the dead body of the deceased. In this case, there is lot of discrepancies in the evidence P.Ws. 16 & 18 and the evidence of P.W. 18 can be accepted in this case since, when there are two contrary views of medical experts, the evidence of P.W. 18 which is in conformity with the oral evidence in this case can be accepted. There is no direct evidence of either murder or of rape as contended by the learned counsel for the appellant. Learned Public Prosecutor relied upon circumstantial evidence and also the medical evidence of P.W. 16. Even the circumstantial evidence is not cogent and reliable. Learned Public Prosecutor relied upon the decision reported in *State of U.P. v. M. K. Anthony* : 1985 CriLJ493 . Their Lordships of the Supreme Court observed that minor discrepancies on trivial matters not touching the core of the case hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. But in this case, the discrepancies are not minor in nature on trivial matters not touching the core of the case as observed by Their Lordships of the Supreme Court. The discrepancies in the evidence of medical witnesses materially affect the very root of the prosecution case. Learned Public Prosecution also relied upon the decision reported in *Piara Singh v. State of Punjab* : 1977

CriLJ1941 and in that decision, their Lordships of the Supreme Court observed that it is well settled that the positive evidence in the case is that of the eye-witnesses who had seen and narrated the entire occurrence. The evidence of a medical man or an expert is merely an opinion which lends corroboration to the direct evidence in the case. Where there is a glaring inconsistency between direct evidence and the medical evidence in respect of the entire prosecution story, that is undoubtedly a manifest defect in the prosecution case. Where the opinion of a medical witness is contradicted by another medical witness, both of whom are equally competent to form an opinion, the opinion of that expert should be accepted which supports the direct evidence of the case. In the instant case, the evidence of P.W. 18 has to be accepted in preference to the evidence of P.W. 16 since the evidence of P.W. 16 was not based on any observation made by her in writing and excepting her oral evidence that she had made entries in her personal diary which she has failed to produce before the Sessions Court. So we accept the evidence of P.W. 18 in preference to the evidence of P.W. 16.

29. Learned counsel for the appellant also contended that the extra-judicial confession said to have been made by the accused before P.W. 2 should not be relied upon since there was no corroboration. In the decision : 1977 CriLJ1941 stated supra Their Lordships of the Supreme Court have observed that the law does not require that the evidence of an extra judicial confession should in all cases be corroborated. Where the extra-judicial confession was proved by an independent witness who was a responsible officer and who bore no animus against the appellant. In the case on hand, the evidence of P.W. 2 cannot be relied upon even though the appellant is said to have given extra-judicial confession before him. P.W. 2 had not disclosed the matter to any one else till he was examined by the police, the normal conduct of human being is that when a serious matter was told they would not keep quiet without informing anybody. In this case, P.W. 2 had not done so. In such circumstances, the evidence of P.W. 2 that the appellant made an extra-judicial confession before him, cannot be accepted.

30. On a careful consideration of the evidence both oral and documentary, we are of the view that the appellant could not have given any extra judicial confession to P.W. 2 that the appellant and his younger brother had committed rape and caused

the death of the deceased by pouring kerosene oil on the body of the deceased and set fire thereupon. We are therefore, unable to accept the findings of the lower court. Hence, we set aside the conviction and sentences imposed on the appellant by the lower court and set him at liberty. The appeal is, therefore allowed. Fine amount, if already paid, is ordered to be refunded.

31. Appeal allowed.

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