IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.7.2022

Delivered on : 22.7.2022

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Criminal Appeal No.642 of 2018

Siva — Appellant

vs.

State by Inspector of Police,
Thiruvalam Police Station,
Vellore District,
(Crime No.272/2010) — Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C. to set aside the judgment of the Additional District and Sessions Judge, Fast Track Court, Vellore made in S.C.No.90 of 2017 dated 11.9.2018 and acquit the appellant/single accused from the charges.

For Appellant : Mr.T.R.Ravi

For Respondent : Mr.Babu Muthumeeran,
Additional Public Prosecutor

JUDGMENT

S.VAIDYANATHAN, J.
and
A.D.JAGADISH CHANDIRA,J.

The Appeal has been filed seeking to set aside the order dated 11.9.2018 passed by the Additional District and Sessions Judge, Fast Track Court, Vellore made in S.C.No.90 of 2017.

2. The appellant stands convicted and sentenced as under:-

Legal Provision	***Sentence***
302 IPC	Life imprisonment with fine of Rs.2000/- in default to undergo rigorous imprisonment for another period of one year
352 IPC	Simple imprisonment for 3 months.

3. Brief facts of the prosecution case:-

i) A complaint, Ex.P1 came to be filed by one Poongodi (PW1) of Valathur in Kanchipuram Taluk, the crux of which is as under:-

She is the niece of one Chinnaponnu (the deceased). The said Chinnaponnu (the deceased) was living with the appellant/accused for about two years at Thiruparkuttai and she had no issues. PW1 came to know from her aunt (the deceased) that the appellant/accused was already a married man having three girl children. She further came to know that two daughters of the appellant had once visited the house of

the deceased and thereafter, the appellant/accused had started demanding the deceased to transfer the said house property in the name of his daughters born through his first wife to which, she had refused and thereupon, the appellant/accused, having developed doubt on the conduct of the deceased, used to pick up frequent quarrel with her and beat her. On such issue, the deceased had lodged a complaint with All Women Police Station and the dispute between the parties was settled by the police by way of compromise, however, on 20.9.2010, when the deceased was sitting in front of her house and PW1 was sitting on the road near the house of one Santhi, which is located opposite to the house of the deceased, the appellant had come to the spot and picked up quarrel with the deceased saying that the house belongs to his wife and children and therefore, the deceased should go out of that house, to which, the deceased had refuted and thereupon, the appellant, picked up a wooden log which was lying in the nearby place and gave a blow on the head of the deceased. PW1 and the deceased raised alarm. When PW1 tried to prevent the appellant, she was pushed down by the appellant. Again they raised alarm seeking help. One Munusamy and Murugesan, viz., P.Ws.2 and 3, who were near the spot, had come to their rescue, however, the appellant, had

picked up a small knife, which, he was hiding in his waist, and inflicted a lacerated injury on the neck of the deceased. The deceased fell down near the lamp post. The appellant/accused ran away from the spot. The injured was taken to C.M.C. Hospital, Vellore in an ambulance, where, she succumbed to the injuries after some time.

ii) On receipt of the complaint, Ex.P1, the Sub Inspector of Police, Thiruvalam Police Station (PW14) had registered the same in Crime No.272 of 2010 for the offence punishable under Section 302 IPC and sent the FIR, Ex.P15 to the Judicial Magistrate.

iii) The Circle Inspector of Katpadi (PW18), who took up the investigation on receipt of telephonic call by the Sub Inspector of Police (PW14) on 21.9.2010, had visited the scene of occurrence and prepared observation mahazar, Ex.P2 and rough sketch, Ex.P21 in the presence of witnesses Sadagopan (PW4) and one Paulraj. Thereafter, he had arranged for taking photographs of the scene of occurrence by the photographer John @ Sambamoorthy (PW12). The photographs and the CD containing compilation of the photographs have been marked as M.Os.1 and 2.

iv) Thereafter, PW18 had collected blood stains and sample earth from the scene of occurrence in the presence of the witnesses

Sadagopan and Paulraj under seizure mahazar. The signature of the witnesses are marked as Ex.P3. Thereafter, at 9.00 am on 21.9.2010, PW18 had conducted inquest on the dead body at CMC Hospital, Vellore in the presence of panchayatdars and P.Ws.1 to 3, Ramadoss and Velu and prepared the inquest report, Ex.P23. Thereafter, He sent the dead body to Government Hospital, Vellore through the Head Constable Raja for conducting post mortem. Subsequently, he had enquired Dr.Ginamaryann Chandy (PW16), who had given first aid to the victim and record her statement.

v) Dr.Ginamaryann Chandy (PW16), who was on duty at 8.10 pm on 20.9.2010 examined the victim and found that she could not speak and put her on ventilator as she had difficulty in breathing. She further found that the victim had bleeding on her face, lower abdomen and lungs and she had sustained head injury and since the victim had some impact in her brain, she could not speak. Since there was substantial bleeding, the victim was provided with drips, however, she died within two hours of her admission. PW16 had recorded in the medical records at the time of admission to the effect that the victim had sustained injuries due to the assault by her husband, however, she could not specifically state as to who had given her such

information. She had opined that the vital injuries found on the deceased could be inflicted with the weapon of offence viz., wooden log, M.O.4. The death summary issued by PW16 is Ex.P17 and the death intimation given by the Hospital to the police is Ex.P18.

vi) On receipt of information, PW18 had reached Karikari Hospital Bus Stand and arrested the appellant/accused, who was standing there and recorded his voluntary confession in the presence of witnesses Saravanan and Gokulan viz., P.Ws.5 and 6 and recorded the same under Ex.P24. On such voluntary confession, PW18 had seized the blood stained knife M.O.3 produced by the appellant which was hidden in his waist under seizure mahazar, Ex.P25 and the wooden log M.O.4 from the drainage near the house of the appellant as identified by him, in the presence of P.Ws.5 and 6 under seizure mahazar, Ex.P26.

vii) On return to the police station, PW18, on examining the appellant/accused, found blood stains on the shirt of the appellant/accused and recovered the blood stained shirt, M.O.5 under Form 95. Thereafter, he remanded the appellant to judicial custody.

viii) On 22.9.2010, PW18 had further investigated the case, enquired the witnesses, Malliga, Murugan, Dhanalakshmi, John @

Sambamoorthy, Senthil, Santhi, Arumugam, Baskar and Janakiraman and recorded their statements. Then PW18 had issued requisition to the Inspector of Police, All Women Police Station, Vellore to get the records in the complaint in Receipt No.723 of 2010 lodged by the deceased. On 28.9.2010, PW18 had arranged for sending the material objects to the Forensic Sciences Department.

ix) The Scientific Officer of Forensic Sciences Laboratory, Vellore, PW17, who received 1-blood stained earth, 2-sample earth, 3-knife, 4-blood stained wooden log, 5-blood stained shirt, 6-blood stained saree, 7-blood stained inskirt for examination, had found that items 1 and 3 to 7 contained blood stains while item 2 contained no blood stains and sent them to Serological Department for further examination. The report issued by PW17 is Ex.P19. He vouchsafed the serology report, Ex.P20 issued by the Junior Scientific Officer of Forensic Sciences Department to the effect that the report reveals that items 1, 3 to 7 contained human blood and items 5, 6 and 7 contained 'B' group blood, but, it was inclusive to say the blood group with regard to items 1, 3 and 4.

x) On 1.10.2010, PW18 had submitted requisition to the Chief Judicial Magistrate to record the Statements the eyewitnesses, viz.,

P.Ws.1 and 2 and the witnesses to confession statement viz., P.Ws.5 and 6 under Section 164 Cr.P.C. and on 6.10.2010 he had summoned the said witnesses and produced them before Judicial Magistrate V, Vellore.

xi) Judicial Magistrate V, Vellore (PW13), on request from the police, had recorded the 164 Statements of P.Ws.1, 2, 5 and 6 under Exs.P11 to P14 respectively.

xii) Thereafter, on 30.1.2011, PW18 had collected from the Inspector of Police, All Women Police Station, Vellore, the case details and the complaint lodged by the the deceased (Ex.P27) and enquired the Inspector of Police Suriyakala and recorded her statement. On the same day, he had received the post mortem certificate, Ex.P29 and enquired the Doctor, who conducted the post mortem and recorded his statement.

xiii) The Doctor, who had conducted the post mortem had opined that the deceased would appear to have died of shock and hemorrhage due to the injuries sustained on scalp and lungs.

xiv) Thereafter, he had issued requisition for the report in respect of M.Os.6 and 7, which were recovered from the dead body under the Special Report, Ex.P28. Subsequently, on transfer of

service, PW18 had handed over the case records to his successor, PW19.

xv) The Inspector of Police, PW19, who took further investigation of the case, enquired PW17-Jaganathan, the Scientific Officer, Ms.Nirmalabai, Deputy Director, Forensic Sciences Department, PW5-Venkatesan, the Village Administrative Officer, Ammundi and Head Constable Raja and recorded their statements. On completion of investigation, PW19 had filed final report for the offences punishable under sections 302 and 352 IPC as against the appellant/accused.

4. Learned Judicial Magistrate, Katpadi has taken the case on file in P.R.C.No.2 of 2012 under Sections 302, 352 IPC against the appellant/accused and finding that the case is to be tried exclusively by the Court of Sessions, after complying with the requirements under Section 207 Cr.P.C., committed the case to the Principal District Court, Vellore and in turn, it was made over to the Additional Sessions Judge (Fast Track Court), Vellore in S.C.No.90 of 2017.

5. When the appellant/accused was confronted with the charges, he denied the same, pleaded not guilty and sought to be tried.

6. During trial, the prosecution had examined 19 witnesses as P.Ws.1 to 19, marked 29 documents as Exs.P1 to P29 and marked

M.Os.1 to 7. Though the appellant pleaded not guilty, no oral and documentary evidence was let in on the side of the defence.

7. On completion of trial, the Trial Court found the appellant/accused guilty for the offences punishable under Section 302 and 352 IPC and sentenced him thereunder as indicated above.

8. Aggrieved against the judgment of conviction and sentence, the present Appeal has been filed by the appellant/accused.

9. The sum and substances of the submissions made by the Mr.T.Ravi, learned counsel appearing for the appellant is as under:-

i) The judgment of conviction and sentence rendered by the Trial Court is against law as it failed to note that the eyewitnesses viz., P.Ws.1 to 3 turned hostile and the other vital witnesses viz., P.Ws.7 to 11 also turned hostile and there is no admissible evidence as against the appellant to convict him and the prosecution has not established its case beyond all reasonable doubts.

ii) The Trial Court has erred in relying upon the Statements of the witnesses recorded under Section 164 Cr.P.C. to convict the appellant when such statements were recorded on 6.10.2010 with regard to the occurrence said to have taken place on 20.9.2010.

iii) When the law makes it clear that Statements recorded under

Section 164 Cr.P.C. can either be utilised only to corroborate or contradict the witnesses *vis-a-vis* statement made in court and it cannot be a substantive piece of evidence, the Trial Court has erred in relying upon such statements to render the conviction against the appellant, when especially the prosecution has not taken any steps to contradict the witnesses who have turned hostile.

iv) The Trial Court has erred in ignoring the fact that P.Ws.5 and 6, arrest and recovery mahazar witnesses had also turned hostile and therefore, the prosecution case with regard to arrest, confession and recovery of material objects is also unbelievable.

v) The Trial Court has failed to note that no documents were marked by the prosecution to establish the title of the deceased to the house property and thereby the prosecution has failed to prove the motive attributed to the appellant that he had demanded for transfer of ownership in the name of his daughters and on refusal of the same by the deceased, he had attacked her.

vi) The judgment of the Trial Court merely relying on the statements of the witnesses recorded under Section 164 Cr.P.C. has rendered the conviction against the appellant, which is inadmissible in law and therefore, it is liable to be set aside.

10. Mr.Babu Muthumeeran, learned Additional Public Prosecutor would submit that it is not a novel thing in criminal cases, and turning of the prosecution witnesses hostile cannot be a ground for acquittal of the accused. He would further submit that the prosecution witnesses had given a clear and cogent statement before the learned Judicial Magistrate which is corroborated by the medical evidence viz., matching of blood group of the deceased with that of the blood stains found on the dress of the appellant recovered on the basis of the voluntary confession statement of the appellant and therefore, he prays for dismissal of Criminal Appeal.

11. In reply, the learned counsel for the appellant would submit that the witnesses for the recovery of weapon of offence have turned hostile and therefore, the recovery of the alleged cloths from the appellant cannot be believed. He would further submit that mere matching of the blood group of the blood samples taken from the victim and the blood stained cloths alleged to have been recovered from the appellant/accused cannot lead to the conclusion that the appellant/accused had been involved in the commission of crime in question. In support of the same, he would rely upon the decision of the Apex Court in ***Sonvir @ Somvir vs. State of NCT of Delhi***

(2018) 8 SCC 24.

12. Heard the learned counsel appearing for the parties and perused the materials available on record.

13. The appellant is alleged to have assaulted the deceased, with whom, he was living together for about twenty years, enraged by her action in lodging a complaint against him to the effect that he gives torture to her demanding that the house property standing in her name has to be transferred in the name of his children born through his wife and the deceased had succumbed to the injuries she had sustained.

14. It is a peculiar case where almost all the independent prosecution witnesses including the witnesses to the arrest and seizure of the weapon of offence produced by the prosecution have turned hostile. The alleged author of Ex.P1 complaint, who is the niece of the deceased, has also turned hostile. Virtually, except the official witnesses, no independent witness has supported the case of the prosecution and the prosecution has not taken proper initiative to prove its case. However, the Trial Court has proceeded to rely upon the statements recorded from such witnesses under Section 164 Cr.P.C. viz., Exs.P11 to P14 to render the conviction against the

appellant.

15. The law is well settled that a statement recorded under Section 164 of the Code of Criminal Procedure is not substantive evidence and it can be used to corroborate the statement of a witness and it can be used to contradict a witness. In ***Ram Kishan Singh vs. Harmit Kaur and another*** (1972) 3 SCC 280, it has been laid down that a statement recorded under Section 164 of the Code of Criminal Procedure is not substantive evidence and it can be used to corroborate the statement of a witness and it can be used to contradict a witness.

16. In ***Baij Nath Sah vs. State of Bihar*** (2010) 6 SCC 736 also, the Apex Court has held that mere statement of the prosecutrix recorded under Section 164 Cr.PC. is not enough to convict the appellant and it is not substantive evidence and it can be utilised only to corroborate or contradict the witness vis-a-vis statement made in court.

17. In the case on hand, the Trial Court has held that though the eyewitnesses to the occurrence had turned hostile during their examination in court, their statements recorded under Section 164

Cr.P.C. corroborates the medical evidence viz., the wounds found on the dead body as revealed in the post mortem certificate and thereby found the appellant guilty. However, strangely, the Trial Court has ignored the fact that when the occurrence is said to have taken place on 20.9.2010 and the post mortem certificate was issued on 21.9.2010, the statements from the witnesses had been recorded on 6.10.2010. Such a long delay in recording the statements of the witnesses speaks much.

18. Further, the Trial Court, taking presumption available under Section 80 of the Indian Evidence Act, 1872, had proceeded to rely upon Exs.P11 to P14, the statements recorded from the witnesses under Section 164 Cr.P.C. to render conviction against the appellant.

19. Of course, there a presumption is available under Section 80 of the Indian Evidence Act, 1872 as to the documents produced as record evidence. The legal provision reads as under:-

> *"80. Presumption as to documents produced as record of evidence.—Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the* ***evidence****, given by a* ***witness*** *in a* ***judicial***

proceeding *or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume— that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken."*

20. The question as to whether such presumption is applicable to the statement (memorandum of identification proceedings) recorded by a Magistrate under Section 164 Cr.P.C. has been elaborately dealt with by a Three Judges Bench in ***Sheo Raj vs. State*** (1963) SCC OnLine All 123) and held that a statement made under Section 164, Cr. P. C. is not 'evidence', is not made in a 'judicial proceeding' and is not given under oath. It has been held therein as under:-

" .... it is open to any person to make a statement or confession before a Magistrate (of a certain

class) in to course of an investigation, or at any time thereafter, but before the commencement of an enquiry or trial and the statement or confession will be recorded by the Magistrate under Sec.164 and is not subject to the bar imposed by Sec. 162. Such a statement, being a previous statement, may be used only to contradict the person when he appears as a witness at the enquiry or trial of the offence or to corroborate him. A statement made by a person before a Magistrate of the required class holding an identification proceeding and recorded by him is a statement governed by Sec. 164; there is no dispute on this point. It is to be noted that Sec. 164 simply mentions "any statement or confession made to him in the course of an investigation" and not "any statement or confession made to him in the course of an investigation by any witness or accused person." It does not state whose statement of confession is to be recorded by him Actually at this stage, when the

offence is still under investigation, there are no witnesses and no accused persons (except in the sense of persons against whom a charge of having committed the offence is levelled and is under investigation). It is only after the investigation has been completed that the police can decide who is to be the accused of the offence before a Magistrate and who are to be the witnesses in the case. Till then there can be no decision about the status of a person as an accused person or as a witness and all persons examined by the police during the investigation are mere interrogatories or informants or statement-makers. The provisions in the Code relating to investigation do not refer to any person as a witness. Though "witness" is not defined in the Evidence Act, Secs. 118, 119 and 120 of it make it clear that a witness is a person who testifies before a court. Under section 59 all facts may be proved by oral evidence and "oral evidence" is defined in Sec. 3 to mean and include

all statements made by witnesses before a court. The definition of "proved" shows that the question of proof of a fact arises only before a court so long as there is no court there is no question of a fact being proved and consequently no question of oral evidence and witnesses. Evidence can be given only in respect of the existence or non-existence of a fact in issue or a relevant fact, vide Sec. 5. Which is a fact in issue or a relevant fact is a matter that arises only before a court because only before a court there can arise the question whether a certain fact is proved or not. These provisions of the Evidence Act make it clear that no person can claim the status of a witness except in relation to a proceeding before a court. It follows that while an offence is still under investigation there is nobody who can be called "witness" and there is no statement that can be called "evidence."

....

A Magistrate is certainly authorized by law to take

*evidence but only in a case of which he has taken cognizance; he is not authorised by law to take evidence in a case pending before another Magistrate or in a case that has already been decided by himself or another Magistrate or in a case that has not yet reached a court. He is not authorized by law to record evidence of any person in any matter and in any circumstance. A Magistrate recording a statement under Sec. 164 is not authorized by law to take evidence for the simple reason that he is not charged with the fluty (**sic for "duty")** of deciding any case and there is no matter to be proved or disproved before him. The other alternative is that the evidence must have been given in a judicial proceeding. When a Magistrate records a statement under Sec. 164 there are only two proceedings in which it can possibly be said to have been recorded, (1) the investigation by the police and (2) the proceeding of recording the statement itself. The investigation*

by the police is not a judicial proceeding. "Judicial proceeding" is not defined in the Evidence Act, but since we are concerned with a statement recorded under the Code of Criminal Procedure the question whether it was recorded in a judicial proceeding or not must be decided in the light of the definition given in the code. "Judicial proceeding" is defined in Sec. 4(1)(m) to mean "any proceeding in the course of which evidence is or may be legally taken on oath." If evidence may be legally taken on oath it is enough even though evidence is actually not taken on oath. An investigation is a judicial proceeding only if it can be predicated that in the course of it evidence may be legally taken on oath. "In the course of which" means "in the carrying out of which" or "in the conducting of which" and not "during the pendency of which." Anything that is done while a proceeding is pending is not necessarily done in the course of it; if it is not a part of it or is done by one not connected with it, it

is not done in the course of it even though it is done during its pendency. In the course of an investigation no evidence can be legally taken on oath by anybody concerned in the investigation. The police have no power to administer oath. As I explained earlier, there is no question of evidence being taken in the course of an investigation. If a Magistrate does something while an investigation is pending it is not done in the course of it. An investigation which would not be a judicial proceeding if a Magistrate did not do something during its pendency does not become one simply because he does something, such as recording a statement under Sec. 164. Since an investigation is to be done solely by the police nothing that he does during its pendency becomes a part of it and can be said to have been done in the course of it. Consequently even if a Magistrate can legally administer oath to a person before recording his statement under Sec. 164 the investigation does

not become a judicial proceeding.

....

12. *Thus I find that the statement made by a person under Sec. 164 cannot be said to be made in a judicial proceeding. Sec. 80, Evidence Act, is, therefore, not applicable to it."*

21. The principles laid down in the above decision make it clear that presumption under Section 80 of the Indian Evidence Act, 1872 cannot be drawn to rely upon the Statements of witnesses recorded under Section 164 Cr.P.C during investigation to render a conviction.

22. Coming to the issue of bloodstains found in the shirt of the appellant M.O.5, recovered at his instance, this court finds that the witness to such recovery have also turned hostile, which, in turn, makes the recovery itself unbelievable. Of course, it is the case of the prosecution that the shirt of the appellant was found to have stained with human blood of "B" group, which was the same "blood group" as that of the deceased. However, it is relevant to note that mere matching of blood group itself is not sufficient to convict the accused. In ***Sonvir @ Somvir vs. State of NCT of Delhi*** (2018) 8 SCC 24, it has been held as under:-

3. <u>Alleged recovery of bloodstained shirt</u>

As per the prosecution, a bloodstained shirt was recovered at the instance of Sonvir alias Somvir (Appellant-Accused 2) from his room in the house of Teja Chaudhary, at the time of his arrest. The bloodstained shirt was sent for analysis to the FSL. As per the FSL report (Ext. PW 33/A), the shirt allegedly recovered from Sonvir alias Somvir (Appellant-Accused 2) was found to be stained with human blood of "B" group, which was the same "blood group" as that of the deceased.

In para 20, the High Court held the recovery of the bloodstained shirt from Sonvir alias Somvir (Appellant-Accused 2) to be incriminating against him, since the blood samples taken from the bedsheet at the scene of crime, were also found to be of the same blood group.

It is relevant to note that as per the FSL report (Ext. PW 33/A), both the bloodstained shirt allegedly recovered from Sonvir alias Somvir (Appellant-

Accused 2) and the blood samples taken from the bedsheet at the scene of crime were found to be stained with human blood of "B" group.

The mere matching of the blood group of the blood samples taken from the bedsheet at the scene of crime, and the bloodstained shirt recovered from Sonvir alias Somvir (Appellant-Accused 2) cannot lead to the conclusion that the appellant had been involved in the commission of the crime.

On this issue, reliance can be placed on two decisions of this Court in Prakash v. State of Karnataka [Prakash v. State of Karnataka, (2014) 12 SCC 133 : (2014) 6 SCC (Cri) 642] , paras 41 and 45 and Debapriya Pal v. State of W.B. [Debapriya Pal v. State of W.B., (2017) 11 SCC 31 : (2017) 3 SCC (Cri) 832] , para 8 wherein this Court while deciding cases based on circumstantial evidence had held that mere matching of the blood group cannot lead to the conclusion of the culpability of the accused, in the absence of a detailed serological comparison, since

millions of people would have the same blood group.

In the present case, the prosecution has not proved that the room from where the bloodstained knife and bloodstained shirt were allegedly recovered, was in the exclusive possession of the appellant. The prosecution case is that the said room was in the house owned by one Teja Chaudhary. The prosecution did not examine the said Teja Chaudhary to prove that the said room was rented to Sonvir alias Somvir and/or was in the exclusive custody of the appellant.

Therefore, the recovery of the bloodstained shirt from Sonvir alias Somvir (Appellant-Accused 2) cannot be used as an incriminating piece of evidence."

23. In this case, as stated above, the eyewitnesses (including the close relative of the deceased) and the recovery witnesses have not supported the case of the prosecution. Such being fatal to the prosecution case, though there is medical evidence to the effect that the bloodstains on the shirt of the appellant was found to belong "B"

group and it matched with the blood group of the deceased, PW17, Scientific Officer, during his cross examination, had admitted that in Ex.P20 serology report, it has not been specifically mentioned as to whether the blood group is 'B' positive or 'B' negative. Even assuming that it matches completely, that alone cannot lead to a conclusion of the culpability of the appellant/accused in the absence of a detailed serological comparison and it cannot be used as an incriminating piece of evidence as against the appellant, when especially, the recovery of the shirt of the appellant is unbelievable in view of the fact that the witness to the recovery had also turned hostile.

24. Therefore, this court is of the view that the prosecution has not proved its case beyond all reasonable doubt and in such circumstances, it may not be proper to convict the appellant/accused on the materials available on record. However, the Trial court, having misled itself into a specious reasoning that there is corroboration between the statements of the witnesses recorded under Section 164 Cr.P.C and the medical evidence, had proceeded to render a conviction against the appellant, which, we cannot endorse, in view of the law laid down in the decisions cited supra.

25. In view of the above, the judgment of conviction and sentence rendered by the Additional District and Sessions Judge, Fast Track Court, Vellore made in S.C.No.90 of 2017 dated 11.9.2018 is set aside and the appellant is acquitted of all the charges. The appellant is set at liberty. Bail bond executed, if any, shall stand cancelled. Fine amount paid, if any, shall be refunded to the appellant.

(S.V.N.,J.) (A.D.J.C.,J.)
22.7.2022.

Index: Yes/No.
Internet: Yes/No.
ssk.

To

1. Additional District and Sessions Judge,
   Fast Track Court, Vellore.

2. Inspector of Police,
   Thiruvalam Police Station,
   Vellore District.

3. The Superintendent,
   Central Prison,
   Vellore.

4. The Public Prosecutor,
   High Court, Madras.

S.VAIDYANATHAN, J.
and
A.D.JAGADISH CHANDIRA, J.

ssk.

P.D. JUDGMENT IN
Criminal Appeal No.642 of 2018

Delivered on
22.7.2022.