

**(2013) 10 MAD CK 0141**

**Madras High Court**

**Case No:** Criminal Appeal No. 114 of 2011

Lakshmanan

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

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**Date of Decision:** Oct. 25, 2013

**Citation:** (2013) 6 CTC 241

**Hon'ble Judges:** S. Rajeswaran, J; P.N. Prakash, J

**Bench:** Division Bench

**Advocate:** K.A. Vairam, Legal Aid, for the Appellant; V.M.R. Rajendran, Additional Public Prosecutor, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

P.N. Prakash, J.

Great King of Kings.

Hath in the tables of His law commanded,

Thou shalt do no murder!

-- William Shakespeare - Richard-III

True! Gods of all men have commanded that no human shall murder another, save in discharge of one's duty, yet, this command is followed more in its breach ever since man himself claimed to be civilized. The same Gods have ordained upon us, the Judges, to decide on the culpability or otherwise of another human being accused of murder, but within the frame work of the law of evidence.

2. Lakshmanan, the sole Accused before the Trial Court who was convicted on two counts for murdering his wife, namely, Tmt. J. Jayalakshmi and his mother, Tmt. Nagammal and was sentenced to undergo double life imprisonment, by Judgment, dated 27.9.2011 in S.C. No. 72 of 2011 passed by the learned Additional District and Sessions Judge, Fast Track Court No. II, Tindivanam, is the Appellant before us.

3. It is the case of the prosecution that on 21.09.2010 at about 11.00 p.m., the deceased Jayalakshmi picked a quarrel with her husband/Appellant Lakshmanan, in the course of which, the Appellant attacked her with a stick and on seeing this, when his mother, Nagammal intervened in support of her daughter-in-law, she was also attacked by the Appellant, resulting in both of them breathing their last.

4. A case in Crime No. 147 of 2010 was registered on the file of Vellimedupettai Police Station, u/s 302, IPC by one Thiru Murthy, the then Sub-Inspector of Police at 8.00 a.m. on 22.9.2010 on the Complaint lodged by one Kamaraj (P.W. 1) of Ganapathipattu village wherefrom the Appellant and deceased hail. According to PW 1, on receiving information from the village around 3.00 a.m., on 22.9.2010, that Lakshmanan had caused the death of his wife and mother, he went to the village and learnt from one Kavitha (PW 4), aged 7 years, who is the daughter of Lakshmanan and deceased Jayalakshmi, that her mother questioned her father as to why he had not purchased castor oil for easy milking of cows and further suggestively accused him that he would have used the money for drinking, which resulted in a heated exchange of words between them, in the course of which, Lakshmanan broke a branch from a nearby fence shrub and started beating her. On seeing this, when his mother came to the aid of her daughter-in-law, he also attacked her in the same transaction, resulting in their death.

5. The Complaint-Ex. P1 lodged by P.W. 1 is completely hearsay and his evidence before the Trial Court is of no value and can be used only to prove the fact that he lodged the Complaint-Ex. P1 with the then Sub-Inspector of Police, Vellimedupettai Police Station at 8.00 a.m. on 22.9.2010. The facts stated in the Complaint did not stand proved from the testimony of PW 1 because admittedly he derived second-hand knowledge of it from PW 4. The investigation of this case was thereafter taken by Thiru Johinder (PW 13), who proceeded to the scene of occurrence and prepared the Observation Mahazar-Ex. P15 and Rough Sketch-Ex. P17 in the presence of Witnesses Thiru Thangaraj-PW 7 and Thiru Raghavan PW 8. In the presence of the same witness PW 13 collected chippings from the floor with and without blood (MO 1 and MO 2) from the place of occurrence under cover of Mahazar Ex. P16. Both of them did not support the prosecution case before the Trial Court. P.W. 13 proceeded with the inquest over the dead bodies of Jayalakshmi and Nagammal in the presence of Witnesses and prepared Inquest reports-Exs. P17 & P18 respectively. Thereafter, the bodies were sent for Post-mortem under the cover of Requisition Letter-Ex. P19 to Government Hospital, Tindivanam, where Dr. Dhanasekaran (P.W. 9) conducted autopsy and issued Post-Mortem Certificates-Ex. P8 (relating to the deceased Jayalakshmi) and Ex. P9 (relating to the deceased Nagammal).

6. During the course of investigation, P.W. 13 recorded the statements of other Witnesses and on coming to know that the Appellant had surrendered on 23.09.2010 before the Judicial Magistrate, Gingee, he obtained custody of the

Appellant on 4.10.2010 and based on the Confession Statement of the Appellant, P.W. 13 recovered the Stick-MO 8 which was allegedly used by the Appellant for causing two deaths, under cover of Mahazar-Ex. P20. The Appellant was thereafter remanded to judicial custody on 5.10.2010 and the Material Objects were sent for examination of the blood-stains on them to the Chemical Examiner through the Court. Since PW 13 was in additional charge as Inspector of Police of the concerned station, he handed over the investigation to Suyambu (PW 14), Inspector of Police, who was back to duty. PW 14 continued with the investigation and in the course of which, he recorded the statements of the Doctor (PW 9), who conducted post-mortem and other experts and after completion of the investigation, he filed a Final Report before the Judicial Magistrate No. I, Tindivanam. The case was committed to the Court of Sessions by the learned Judicial Magistrate No. I, Tindivanam after complying with the provisions of Section 207, Cr.P.C.

7. The Trial Court, namely, Fast Track Court No. II, Tindivanam framed charges on two counts u/s 302, IPC against the Appellant and questioned, for which, he pleaded "not guilty" to the charges.

8. In order to prove the prosecution case, 14 Witnesses were examined, 21 Exhibits and 9 Material Objects were marked. After closure of the prosecution evidence, the accused was questioned u/s 313, Cr.P.C. with regard to the incriminating material against him, for which, he denied the same. No Witnesses were examined and no documents were marked on behalf of the Accused.

9. It was strenuously argued by the learned Counsel for the Appellant that the prosecution has miserably failed to prove the case especially in the light of the fact that the solitary Child Witness-PW 4 had turned hostile. Per contra, the learned Additional Public Prosecutor argued that there is sufficient evidence to hold the Appellant guilt of the charge.

10. The entire case is based on the direct evidence which is that of the solitary Child Witness, namely, Kavitha (PW 4), the seven year old daughter of the Appellant and deceased Jayalakshmi. As narrated above, even according to the prosecution, PWs. 1, 2, 3 & 5 are not eyewitnesses, but they have derived the information from PW 4 only.

11. Jayanthi, PW 6 who examined the blood-stains found on the Material Objects and opined that they are of human blood. Beyond that, there is no evidence to connect with the blood-stains found on the Stick-MO 8 with the stains on MOs. 1, 3 to 7 as the result of grouping test was inconclusive (Ex. P3). P.Ws. 7 & 8, who are the Mahazar Witnesses for the recovery of MOs. 1 to 7, as stated above, did not support the prosecution case and they were treated hostile before the Trial Court. The recovery of the Stick-MO 8 at the instance of the Appellant was established by the evidence of Chandravaradhan, PW 10-Village Administrative Officer of Vellimedupettai village and the Investigation Officer-PW 13.

12. We are not advertent to the injuries noted on the dead bodies and proved by the evidence of PW 9, the reasons for which will become self-evident later.

13. This Court bestowed its anxious consideration to see if there is any tangible material to connect the crime with the criminal. The prosecution had unfortunately resolved to remain content with the statement given by the Child Witness to the Police and had not endeavoured to collect further materials to pin the offender. During the examination of Kavitha (P.W. 4), the Trial Court had put sufficient questions to examine the capability and mental disposition of the said child. Alas! in her examination-in-chief, she turned turtle and stated as under:

.....the accused is my father. My mother died six months back. I do not know how my mother and grand-mother died. At the time of incident, my father was in Chennai. My mother and my grand-mother were sleeping in my house. I was in my paternal uncle Pandurangan's house. My paternal uncle told me that my mother and grand-mother had died. When I went there, I found them lying dead with injuries. I do not know who assaulted them. I do not see who assaulted them... ....

(translated version of P.W. 4's evidence)

14. We are aware that the First Appellate Court, while dealing with the Criminal Appeal u/s 374(2) of Cr.P.C., will loathe to read the judgment of the Trial Court and would appreciate the evidence on record as if it were a Court of first instance. This is a case in which, two lives have been lost. Therefore, in order to satisfy our judicial conscience, we went through the reasons given by the Trial Court for convicting the Appellant so that we can feel rest assured that we have not inadvertently failed to look at any incriminating material connecting the Appellant to the crime, for that would also lead to travesty of justice. Rightly, the Trial Court has not relied upon the evidence of P.Ws. 1 to 5. But the Trial Court has reasoned that the recovery of the Stick-MO 8 with blood-stains at the instance of the Appellant having been established through the evidence of PWs 10 & 13, the presence of human blood on the Stick- MO 8 and MOs. 1, 3 to 7 would be sufficient to conclude that it was the Appellant, who had committed the offence. Though the prosecution has satisfactorily established the recovery of the Stick-MO 8 based on the confession of the Appellant, that by itself cannot link the Appellant with the crime. When such recovery, popularly called "Section 27 recovery" is proved, three hypotheses would follow, viz., (i) the accused himself had concealed it; (ii) the accused has seen someone else concealing it; and (iii) the accused was told by another person that it was concealed there. Unless there is tangible evidence, de hors the recovery, against the accused, Section 27 recovery simpliciter would take us nowhere. However, foul the crime is, the Court of law cannot convict the accused on mere conjectures and subjective surmises. In the absence of any legal evidence to establish the guilt of the Appellant, we are unable to confirm the conviction and sentence imposed by the learned Additional District and Sessions Judge, FTC No. II, Tindivanam.

Accordingly, this Criminal Appeal is allowed and the conviction and sentence imposed on the Appellant by the learned Additional District and Sessions Judge, FTC No. II, Tindivanam by the Judgment in S.C. No. 72 of 2011, dated 27.09.2011 are hereby set aside. The Appellant is acquitted of all the charges levelled against him and he is directed to be set at liberty forthwith unless his presence is required in connection with any other case.