

**BAIL SLIP**

Soundirapandian, S/o Iyyapillai aged 61-(A1), Utchikumar, S/o Subramanian @ Kathadi, aged 41(A2) were released on bail by the order of this Court, dated 19.04.2012 made in MP(MD).No.1/2012 in Cr1.A(MD).No.189/2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.11.2015

PRONOUNCED ON : 19.02.2016

C O R A M

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

&

THE HONOURABLE MR.JUSTICE V.S.RAVI

Cr1. A. (MD) No.189 of 2011

and

Cr1.R.C. (MD) .No.792 of 2011

Cr1.A. (MD) .No.189 of 2011

1.Soundirapandian

2.Utchikumar ... Appellants/A1 and A2

Vs.

State represented by,
The Inspector of Police
Tuticorin South Police Station
Tuticorin District.
(Crime No.285/2010)

... Respondent/ Complainant

Appeal filed under Section 374(2) Cr.P.C. against the conviction and sentence made in S.C.No.77 of 2011 dated 27.06.2011 on the file of the learned Additional Sessions Judge, Fast Track Court No.I, Tuticorin, Tuticorin District.

For Appellants : Mr.V.Kathirvelu,
Senior Counsel for
Mr.Sekar

For Respondent : Mr.K.S.Durai Pandian,
Additional Public Prosecutor

**Crl.R.C.(MD).No.792 of 2011**

A.Jeyashanmugarajan

... Petitioner/
PW25

WEB COPY

Vs.

1.State represented by,
The Inspector of Police
Tuticorin South Police Station
Tuticorin District.
(Crime No.285/2010)

... 1st respondent/
Complainant

2.Madasamy

3.Anthonraj

... Respondents 2 & 3/
Accused Nos.3 & 4

Criminal Revision filed under Section 397 and 401 Cr.P.C. against judgment made in S.C.No.77 of 2011 dated 27.06.2011 on the file of the learned Additional Sessions Judge, Fast Track Court No.I, Tuticorin in respect of the respondents 2 and 3/accused Nos.3 and 4.

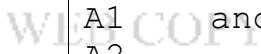
For Appellants : Mr.G.Karuppasamy Pandian,
for Mr.S.Murugan

For 1st respondent : Mr.K.S.Durai Pandian,
Additional Public Prosecutor

For respondents 2 & 3 : Mr.V.Kathirvel,
Senior Counsel for
Mr.T.Sekar

COMMON JUDGMENT

The appellants viz., Soundirapandian and Utchikumar, figured as accused Nos.1 and 2 in S.C.No.77 of 2011 on the file of the learned Additional Sessions Judge, Fast Track Court No.I, Thoothukudi. They were prosecuted along with two other persons viz., Madasamy and Antonyraj, who figured as accused Nos.3 and 4 respectively. A1 and A2 were prosecuted for offences punishable under Sections 302, 307, 452 and 506(ii) IPC. A3 and A4 were prosecuted for offences under Sections 341, 302 r/w 34, 307 r/w 109 and 506(ii) IPC. By a judgment dated 27.06.2011, the learned trial Judge acquitted accused Nos.3 and 4 of all the charges and accused Nos.1 to 4 of the charge for the offence under Section 506 (ii) IPC. The learned trial Judge convicted the appellants/ A1 and



Challenging the said judgment of the trial Court dated 27.06.2011, the appellants, who were the first and second accused in the said criminal case, have preferred the appeal in Criminal Appeal (MD) No.189 of 2011. Mr.Jeyashanmugarajan, who figured as PW25, has preferred a revision in CrI.R.C.(MD).No.792 of 2011 against the acquittal of the accused Nos.3 and 4.

3.The case of the prosecution, as discerned from the evidence adduced on the side of the prosecution, in brief, is as follows;

(a) A1 - Soundirapandian, PW1 - Annalakshmi, PW2 - Deivendrakani and PW25 - Jeyashanmugarajan are the sons and daughters of the deceased Parvathiammal. There was a dispute regarding the family properties between accused No.1 - Soundirapandian on the one hand and deceased Parvathiammal and PW25 on the other hand. With regard to the said properties, there had been previous four rounds of litigation between the deceased Parvathiammal and third parties and in all those cases, she emerged successful. While so, on 18.04.2010 at 6.00 to 6.30 a.m, A1 - Soundirapandian along with A2 to A4 viz., Utchikumar, Madasamy and Antonyraj respectively, came to the house, wherein the deceased Parvathiammal was residing. in a van and dumped his motorbike and other household articles in front of the said house and then directed the deceased Parvathiammal to vacate the house. PW25, PW26, PW27, PW28, PW29, PW30, PW31, PW32, PW33, PW34, PW35, PW36, PW37, PW38, PW39, PW40, PW41, PW42, PW43, PW44, PW45, PW46, PW47, PW48, PW49, PW50, PW51, PW52, PW53, PW54, PW55, PW56, PW57, PW58, PW59, PW60, PW61, PW62, PW63, PW64, PW65, PW66, PW67, PW68, PW69, PW70, PW71, PW72, PW73, PW74, PW75, PW76, PW77, PW78, PW79, PW80, PW81, PW82, PW83, PW84, PW85, PW86, PW87, PW88, PW89, PW90, PW91, PW92, PW93, PW94, PW95, PW96, PW97, PW98, PW99, PW100, PW101, PW102, PW103, PW104, PW105, PW106, PW107, PW108, PW109, PW110, PW111, PW112, PW113, PW114, PW115, PW116, PW117, PW118, PW119, PW120, PW121, PW122, PW123, PW124, PW125, PW126, PW127, PW128, PW129, PW130, PW131, PW132, PW133, PW134, PW135, PW136, PW137, PW138, PW139, PW140, PW141, PW142, PW143, PW144, PW145, PW146, PW147, PW148, PW149, PW150, PW151, PW152, PW153, PW154, PW155, PW156, PW157, PW158, PW159, PW160, PW161, PW162, PW163, PW164, PW165, PW166, PW167, PW168, PW169, PW170, PW171, PW172, PW173, PW174, PW175, PW176, PW177, 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accused persons tried to bring the articles into the house and the same was resisted by PW1 and Parvathiammal, pursuant to which, the first accused abused PW1-Annalakshmi with filthy words. PW25-Jeyashanmugarajan, who was present there, questioned the propriety of the said act of using vulgar words against their sister, whereupon the first accused pushed the motorbike towards PW25 - Jeyashanmugarajan. PW25 - Jeyashanmugarajan caught hold of the bike to avoid the same hitting him. Thereafter, PW1-Annalakshmi contacted telephone No.100 to be informed that she should contact Thoothukudi South Police Station. She was also provided with the telephone number of the said Police Station. When PW1 contacted the said Police Station over phone, she was directed to come in person to the Police Station. Hence, PW1 - Annalakshmi, PW25 - Jeyashanmugarajan and deceased Parvathiammal went to Thoothukudi South Police Station. Meanwhile, the first accused had reached the said Police Station along with an advocate. When the details of the incident were recited by deceased Parvathiammal, PW29 - Abraham Cruz, the Sub Inspector of Police, advised both parties to get the dispute resolved in a civil Court as the dispute was civil in nature. The file relating to the same is Ex.P35. The said incident provided a motive for the accused to kill the deceased Parvathiammal.

(b) On 20.04.2010 in the early morning between 4.00 a.m. and 4.45 a.m. the deceased Parvathiammal and PW1 - Annalakshmi went to the public water tap near Sudalaimadasamy Temple to fetch water. While the deceased Parvathiammal was collecting water from the public tap, PW1 - Annalakshmi was standing at a distance of five feet. At that juncture, A1 - Soundirapandian armed with Aruval and A2 - Utchikumar armed with an oblique shaped aruval (Kozhival aruval), accompanied by A3 - Madasamy and A4 - Antonyraj, who were armed with sticks, came to the above said place. They advanced towards deceased Parvathiammal who did not notice them coming towards her as she was busy in collecting water. A1 - Soundirapandian with the intention of causing her death, cut the deceased Parvathiammal with aruval stating that she should die as she staked claim to the property. When the said blow was blocked by deceased Parvathiammal, the first accused pushed her hands and then cut her again simultaneously. A1 inflicted cut injuries on several parts of her body including right side chest, chin and parietal region of the head. The second accused also inflicted cut injuries including an injury extending from neck to mouth. Due to the said injuries, Parvathiammal died on the spot.

(c) The first accused on seeing PW1, aimed a blow with aruval on PW1 addressing whether she too wanted the property. As the blow was blocked by PW1 - Annalakshmi using her hands, she sustained injuries on both hands. Thereafter, the accused 2 to 4 caught hold of the legs of the deceased Parvathiammal, dragged her



and cut her. As PW25 - Jeyashanmugarajan and a son of PW1 were there in the house, in order to alert them, PW1 - Annalakshmi ran towards the house and asked Jeyashanmugarajan (PW25) to run away from that place along with the son of PW1. However, PW25 alone left that place and the son of PW1 remained in that house. Then, she contacted the Police through Telephone No.100 and PW3 - Velkumar and requested him to help her. At that point of time, the accused 1 and 2 entered the house and indiscriminately cut her with aruvals inflicting injuries on neck, head, back of the chest and hip. On hearing noise from outside, the second accused - Utchikumar left the house dragging the first accused along with him.

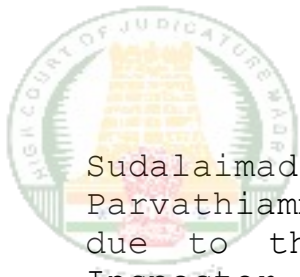
(d) Subsequently, on the information received over phone from PW1, PW3-Velkumar came to the place of the second occurrence and sent PW1 - Annalakshmi in an 108 ambulance van to Thoothukudi Government Medical College Hospital, where her dying declaration was recorded by the learned Judicial Magistrate No.II, Tuticorin (PW23) under Ex.P28. PW9 -Dr.Jey Ganesh, who admitted PW1 - Annalakshmi at Government Medical College Hospital, Thoothukudi found the following injuries on her:

- "(1) Multiple laceration with various sizes over scalp in post aurid left region measuring 3 x 2 cm;
- (2) Aro/NC 3 laceration in parieto occipital around 2 x 2 cm, 3 x 2 cm and 3 x 3 cm;
- (3) Aro/NC 3 laceration wound in vertex of size 4 x 5 cm, 6 x 5 cm and 3 x 3 cm;
- (4) 2 laceration wound in left back of 1 x 1 cm x 2 x 2 cm;
- (5) Laceration wound in right dorsum of hand 5 cm length;
- (6) Laceration wound in right palm 3 x 4 cm;
- (7) Laceration with open fracture left forearm 2 cm below elbow joint of size 5 x 4 cm;
- (8) Laceration wound left palm near thumb 2 x 3 cm x towards ring finger 4 x 3 cm."

The Accident Register prepared by PW9 is Ex.P1. X-ray taken to PW1 while she was taking treatment at the Government Medical College Hospital, Thoothukudi is MO.14 series. X-ray report is Ex.P45 and the report relating to C.T. Scan taken to PW1 is Ex.P46. After getting initial treatment at the Government Medical College Hospital, Thoothukudi, PW1 got discharged and then, she took treatment as inpatient at AVM Hospital, Thoothukudi from 10.50 a.m. on 20.04.2010. The wound certificate issued by PW10 - Dr.Thangam, who admitted her at AVM Hospital, Thoothukudi is Ex.P3.

<https://hcservices.ecourts.gov.in/hcservices/>

(e) PW25 - Jeyashanmugarajan who is an eyewitness for the occurrence that took place at the public water tap near



Sudalaimadasamy Temple and also in the house of deceased Parvathiammal, came to know that his mother Parvathiammal had died due to the injuries and he lodged a complaint with the Sub Inspector of Police, Thoothukudi South Police Station, Thoothukudi under Ex.P31. On the basis of the complaint given by PW25, PW31 - Mr.R.S.Ganesan, the then Sub Inspector of Police, Thoothukudi South Police Station, prepared Ex.P36 - express First Information Report and registered a case at 7.30 hours on 20.04.2010 in Crime No.285 of 2010 on the file of the said Police Station for offences under Sections 341, 307, 302 and 506(ii) IPC.

(f) The investigation of the case was taken up by PW32 - Mr.Balamurugan, the then Inspector of Police, Thoothukudi South Police Station. He visited the scene of occurrence viz., the place wherein the dead body of Parvathiammal was found and prepared Ex.P37 - Observation Mahazar and Ex.P38 - Rough Sketch in the presence of PW13 - Mayaperumal and PW14 - Kaliappan. He collected MO.12 - blood-stained earth and MO.13 - sample earth from the place of occurrence under Ex.P39 - Mahazar in the presence of the very same witnesses. He also inspected the second place of occurrence viz., the house of Parvathiammal and prepared Ex.P41-Observation Mahazar and Ex.P42 - rough sketch in the presence of the very same witnesses. Inquest was conducted by him in the presence of Panchayatdhars over the dead body of Parvathiammal and based on the same, Ex.P40 - Inquest Report was prepared. Then, the dead body was sent through PW21- Muthusamy, Head Constable, to the Government Hospital, Thoothukudi along with Ex.P5 - requisition for autopsy. Based on the requisition for autopsy marked as Ex.P5, PW12 - Dr.Manoharan conducted post-mortem examination on the dead body of Parvathiammal and he found the following injuries:

" 1.A cut wound of size 13 cms x 4 cms x vertebra deep extending from right angle of mouth to the right side of neck which is 7 cms below the right ear. The underlying muscles, major vessels and nerves found cut. The right half of the mandible found cut.

2.A cut wound of size 5 cms x 2 cms x oral cavity deep seen in the right side of chin.

3.A cut wound of size 7 cms x 2 cms x bone deep seen in the right parietal region of the scalp. There is a cut injury of length 6 cms seen in the right parietal bone.

4.A cut wound of size 3 cms x $\frac{1}{2}$ cm x bone deep seen in the left occipital region.

5.A cut wound of size 6 cms x 2 cms x bone deep seen in the middle of right arm.

6.A cut wound of size 7 cms x 6 cms x bone deep seen in the right forearm. The medial bone of right forearm found cut.

7. A cut wound of size 12 cms x 2 cms x bone



deep seen in the right palm. The right little finger found partially severed from the hand.

8.A cut wound of size 4 cms x 2 cms x muscle deep seen in the medial aspect of left forearm.

9.A cut wound of size 4 cms x ½ cm x bone deep seen in the left palm.

10.A cut wound of size 3 cms x ½ cm x 4 cms seen between the left middle and ring finger.

11.A stab wound of size 4 cms x 1 cm x muscle deep seen in the lateral aspect of right chest"

He issued Ex.P6 - Post-mortem Examination Report opining that the deceased appeared to have died of shock and haemorrhage due to the above said injuries between 6.00 to 12.00 hours prior to autopsy. He also opined that the said injuries could have been caused by MOs.1 and 2.

(g) PW2 - Deivendrakan, who heard about the occurrence, paid a visit to PW1, when she was taking treatment in the hospital. PW4 - Subbaiah, PW5 - Maharajan, PW7 - Kavitha and PW8 - Subramanian knew about the previous enmity over the property dispute. PW8 is none other than the husband of PW1. During the course of investigation, the third accused-Madasamy was arrested by PW32 on 22.04.2010 at 6.00 a.m. at a place opposite to FCI Godown near Indira Nagar diversion. His confession statement was recorded in the presence of PW15 - Balasubramanian (VAO of Meelavittan Part II) and one Periyannayagam. Based on the information furnished by A3 in the admissible portion of his confession statement, which has been marked as Ex.P13, MO.3 - stick was recovered under Ex.P14 - Mahazar in the presence of the very same witnesses. Meanwhile, accused 1 and 2 had surrendered before the Judicial Magistrate No.III, Tirunelveli. The fourth accused also surrendered in the same Court on 23.04.2010. PW32 - the investigating officer took the accused 1, 2 and 4 to Police custody after getting necessary orders from the Court. On separate interrogation, they gave confession statements which were recorded in the presence of PW.15 and one Periyannayagam. Based on the information furnished in the admissible portion of the confession statement of A1 marked as Exs.P15, MO.5 - TVS Suzuki Motorcycle and MO.1- Kozhival aruval were recovered under Exs.P18 and P19 -Seizure Mahazars respectively. Based on the information furnished in the admissible portion of the confession statement of A2 marked as Ex.16, MO.2- aruval was recovered under Ex.P20- seizure mahazar. MO.7 - Half sleeves shirt, MO.8 - Full sleeves shirt, which were kept in MO.6 - Polythene bag were recovered under Ex.P21 seizure mahazar. Similarly, based on the information furnished in the admissible portion of the confession statement of A4 marked as Ex.P17, MO.4 - stick was recovered under Ex.P22 - seizure mahazar.

(h) The material objects recovered in the case were sent to



the Regional Forensic Lab, Tirunelveli, along with the requisition letter of the Judicial Magistrate under Ex.P29. PW24 - Assistant Director of Forensic lab, Tirunelveli, who conducted chemical examination, found bloodstains in MOs.1 and 3 to 9, except the sample earth (MO.2). On serological examination at Serology Department, Madurai, the bloodstains found in MOs.1, 3, 4, 5 and 6, were identified to be "O" group human blood, whereas the group of the bloodstains found in the other articles could not be identified even though it was found to be human blood. The serological reports are marked as Exs.P32 and P33. The Investigating Officer also submitted an alteration report under Ex.P44. After examining the witnesses, recording their statements and on completion of the investigation, PW32 submitted a final report alleging commission of the offences punishable under Sections 341, 302, 452, 307, 506(ii) r/w 34 IPC.

4.The same was taken on file by the learned Judicial Magistrate No.I, Tuticorin as P.R.C.No16 of 2000 and the case was committed to the Court of Session, Thoothukudi. After the case was committed to the Court of Session, it was taken on file as S.C.No.77 of 2011 and made over to the learned Additional Sessions Judge, Fast Track Court No.I, Thoothukudi for trial and disposal according to law.

5.The charges framed against the accused persons are as follows.

Charge Nos.	Accused Nos.	Offence U/s.
1	A3 and A4	U/s.341 IPC
2	A1 and A2	U/s.302 IPC
3	A3 and A4	U/s.302 r/w 34 IPC
4	A1 and A2	U/s.307 IPC
5	A3 and A4	U/s.307 r/w 109 IPC
6	A1 and A2	U/s.452 IPC
7	A1 to A4	U/s.506(ii) IPC.

6. In order to prove the charges, 33 witnesses were examined as PWs.1 to 33, 46 documents were marked as Exs.P1 to P46 and 14 material objects were produced as MOs.1 to 14 on the side of the prosecution. After completion of recording of evidence adduced on the side of the prosecution, the incriminating materials found therein were pointed out and the accused were questioned under Section 313(1)(b) of Cr.P.C. regarding those incriminating materials and also generally in respect of the case against them. They denied such incriminating evidence to be false and they resorted to their stand that they were innocent and pleaded for acquittal. No defence witness was examined, no document was



marked and no material object was produced on the side of the accused.

7. The learned trial Judge, after considering the evidence in the light of the argument advanced on both sides, came to the conclusion that the charges against Accused Nos. 3 and 4 were not proved, whereas the charges framed against the accused Nos. 1 and 2, except the charge for the offence under Section 506(ii) IPC, were proved. Accordingly, by a judgment dated 27.06.2011, the learned trial Judge acquitted A3 and A4 of all the offences with which they stood charged, convicted A1 and A2 for the offences under Sections 302, 307 and 452 IPC and sentenced them as indicated supra. As against the conviction as well as sentence, the accused Nos. 1 and 2 have filed the appeal and as against the acquittal of the accused 3 and 4, PW25 has preferred the revision on various grounds set out in the appeal petition and the grounds of revision respectively.

8. The learned Senior Counsel for the appellants has contended vehemently that the prosecution case suffer from serious infirmities and inconsistencies; that the prosecution put-forth a contention placing reliance on the testimonies of the interested witnesses and it failed to examine independent witnesses; that there are serious doubts regarding the genuineness of Ex.P31-complaint and that the testimonies of PW1 and PW25, who were projected as eyewitnesses, apart from being unbelievable were not clear and cogent. It is the further contention of the learned senior counsel for the appellant that the alleged eyewitnesses PW1 and PW25 failed to come forward with the true version regarding the occurrence making their testimonies unreliable; that the offences allegedly committed by the appellants were not proved by reliable, clear and cogent evidence; that the judgment of the trial court holding the appellants guilty of the offences punishable under section 302, 307 and 452 IPC is against the facts, weight of evidence, probabilities of the case and contrary to the legal principles and that hence the criminal appeal should be allowed, the conviction of the appellants should be set aside and the appellants (accused 1 and 2) should be acquitted of all the charges for which they were prosecuted. Learned Senior counsel also contended that there was unexplained delay in lodging the complaint and the same was not properly adverted to by the trial court.

9. Per contra, it is the contention of the learned Additional Public Prosecutor that the charges against the appellants were proved by adducing clear, consistent and reliable evidence through eye witnesses; that the occurrence took place at the public tap ~~services~~ of residence of the deceased and PW1 and that the minor discrepancies found in the testimonies of prosecution witnesses which will negative artificiality and show natural flow



of evidence without premeditation or concoction are sought to be blown out of proportion by the learned senior counsel for the appellants. It is his further contention that the material objects recovered during the course of investigation also establish the link between the death of the deceased and the acts alleged on the part of the appellants. The learned Additional Public Prosecutor has contended further that though there are certain discrepancies in the evidence adduced on the side of the prosecution, they were minor discrepancies and natural variations due to passage of time, fading memories of the witnesses and inability of the rustic witnesses to picturise the occurrence without loop holes could not affect the case of the prosecution and that it would not even cause a reasonable suspicion regarding the prosecution version.

10. This court considered the above said submissions made on both sides, the testimonies of the witnesses examined on the side of the prosecution, the documentary evidence produced on the side of the prosecution and the material objects produced in this case. This court also thoroughly went through the judgment of the trial court, which is challenged in this appeal.

11. After registration of the case in Crime No.285/2010 on the file of Thoothukudi South Police Station, Thoothukudi District, based on Ex.P31-complaint, PW32-Thiru.Balamurugan, Inspector of Police visited the place of occurrence, prepared Observation Mahazar and rough sketch marked as Exs.P37 and P38 respectively, recovered MO12-blood stained earth and MO13 - sample earth under Mahazar and marked as Ex.P32 and Ex.P39 respectively and then he proceeded with the inquest. The inquest report prepared by him in the presence of panchayatdars has been marked as Ex.P40. Thereafter dead body of the deceased Parvathiammal was sent to the Government Hospital, Thoothukudi for postmortem examination along with Ex.P5-Requisition issued by the Inspector of Police (Investigating Officer). PW12-Dr.Manoharan conducted autopsy and issued Ex.P6-postmortem examination certificate. PW12-Dr.Manoharan has noted in Ex.P6 as many as 10 cut injuries and one stab injury, which according to him could have been caused by weapons like MO1 and MO2 - Aruvals. The said injuries resulted in the death of deceased Parvathiammal due to shock and haemorrhage. The following are the external injuries noted down by PW12-Dr.Manoharan during the course of autopsy.

" 1.A cut wound measuring 13 cm x 4 cm x vertebra deep extending from right angle of the mouth to the right side of the neck 7 cm below the right ear. The right half of the mandible, underlying muscles, major vessels and nerves were found cut.

2.A cut wound measuring 5 cm x 2 cm x oral deep seen in the right side of chin.

3.A cut wound measuring 7 cm x 2 cm x bone deep seen in the right parietal region along with a



cut injury in the right parietal bone to a length of 6 cm.

4.A cut wound measuring 3 cm x ½ cm x bone deep in the left occipital region.

5.A cut wound measuring 6 cm x 2 cm x bone deep in the middle of right arm.

6.A cut wound measuring 7 cm x 6 cm x bone deep in the right forearm. The medial bone of right forearm found cut.

7. A cut wound measuring 12 cm x 2 cms x bone deep in the right palm with partial severance of right little finger.

8.A cut wound measuring 4 cm x 2 cm x muscle deep in the medial aspect of left forearm.

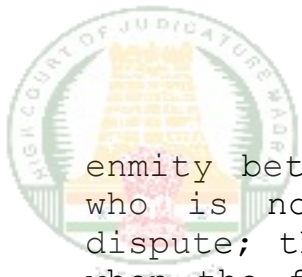
9.A cut injury measuring 4 cm x ½ cm x bone deep in the left palm.

10.A cut injury measuring 3 cm x ½ cm x 4 cm between the left middle and ring fingers.

11.A stab wound measuring 4 cm x 1 cm x muscle deep seen in the lateral aspect of right chest"

On dissection, pericardium was found to contain 10 ml of straw coloured fluid, heart was found normal and empty, lungs, liver, spleen and kidneys were found normal but were found pale. The Medical Officer, who conducted autopsy opined that the death could have occurred due to shock and haemorrhage caused by multiple injuries and it would have occurred between 6 to 12 hours prior to autopsy. The post mortem examination commenced at 14.40 hours on 20.04.2010. So the death would have occurred between 2.40 hours and 8.40 hours on 20.04.2010. Considering the nature of injuries and the cause of death, this court is of the view that the above said injuries could not be self-inflicted injuries; that the same could not have been sustained in an accident; that on the other hand, the injuries should have been caused by another or other persons, using weapons like Aruvals and that hence the death of deceased Parvathiammal is nothing but a homicidal death.

12. The next question that arises for consideration is who caused the injuries leading to the death of deceased Parvathiammal. The first accused Soundarapandian is the eldest son of deceased Parvathiammal. His younger brother Manoharan is no more. PW25-Jayashanmugarajan is another son of deceased Parvathiammal. PW1-Annalakshmi and PW2-Deivendira Kani are the daughters of deceased Parvathiammal. Their grandmother Deivanaiammal owned a property measuring about 11 cents lying on the south of Palayamkottai Road. On the North of the said road, there is yet another property measuring 12 cents, which stood in the name of the husband of Parvathiammal/father of A1, PWs.1, 2 and 25. PW25 was residing with her mother and he did not get married. The case of the prosecution is that there was a previous



enmity between the deceased Parvathiammal and the first accused, who is none other than a son of Parvathiammal over property dispute; that a day prior to the occurrence, there arose a problem when the first accused accompanied by accused 2 to 4 brought his old household articles and a scooter to the house in which deceased Parvathiammal was residing and attempted to take those articles into the said house for placing them inside the house; that the said problem was taken to the police station, where the police, after enquiry, finding the dispute to be civil in nature, directed the parties to work out their remedies in the civil Court and got undertakings from them not to commit any act which would lead to law and order problem; that the same provided the motive for the accused persons to cause the death of deceased parvathiammal on the early hours of the morning on 20.04.2010 when the deceased Parvathiammal went to the nearby public water tap to take water.

13. PW1- Annalakshmi is none other than a daughter of deceased Parvathiammal and sister of the first accused Soundirapandian. PW25-Jeyashanmugarajan is another son of Parvathiammal, who was residing with Parvathiammal in the disputed house apart from first accused Soundirpandian, PW1-Annalakshmi, PW25-Jeyashanmugarajan, Parvathiammal had one more daughter, who is none other than PW2 Deivendrakan and one more son by name Manokaran, who is no more. PW1, in her evidence, made it clear that 11 cents of land was owned by her grandmother Deivanaiammal, which lies on the south of Palayankottai road, whereas 12 cents of land, which lies on the north of the said road belonged to her deceased father; that there was a previous litigation in respect of 4 cents of land, which stood in the name of Deivanaiammal between one Vellathurai on the one hand and Parvathiammal and her sons and daughters on the other hand; that it was Parvathiammal, who contested the case in all the courts and got a judgment in their favour; that the first accused Soundirapandian wanted to get that property for which Parvathiammal used to reply that it was she who protected the property from litigation and if she was asked to go out where could she go; that, while so, on 18.04.2010 at 6 or 6.30 hours, the first accused, accompanied by the other accused, brought his old household articles and tried to place them inside the house in which Parvathiammal was residing; that at that point of time, PW1 had gone there and that she, along with Parvathiammal resisted the attempt made by the accused persons. It is her further evidence that pursuant to such resistance, the first accused used abusive language against Parvathiammal, which was questioned by PW1- Annalakshmi and PW25-Jeyashanmugarajan and thereafter, the accused persons left that place. that, she contacted the police over Telephone No.100, whereupon they gave the telephone number of Thoothukudi South Police Station and asked <https://hcservices.courts.gov.in/hcservices/> the police in the said police station; that when she contacted the Police Officer-Incharge of the said police station, they were asked to come in person to the police station



and that by the time they reached the police station, the first accused was there in the police station along with an advocate. It is her further statement that the police, after enquiry, advised both parties not to cause any problem and work out their remedy in the Civil Court.

14. PW1 is corroborated by PW2 - Deivendrakani regarding the existence of the property dispute. It is her clear testimony that there was a property dispute between her mother Parvathiammal and her brother viz. the first accused for quite a long time; that prior to the occurrence, the first accused quarrelled with the deceased Parvathiammal asking her to hand over the property claimed by him which led to the lodging of a complaint with the police in Thoothukudi South Police Station and that the same provided a motive for the accused to kill Parvathiammal. PW2 gives clarity in her testimony regarding the nature of dispute. According to her testimony, the property owned by her grandmother (Deivanaiammal) had been bequeathed by her by way of a Will in favour of the three grandsons, namely the first accused (Soundirapandian), PW25 (Jeyashanmugarajan) and Manokaran; that subsequently since Manokaran died, his mother Parvathiammal became entitled to his 1/3rd share and that in respect of the share of Parvathiammal, the dispute arose between the first accused and his mother, namely Parvarthiammal.

15. Though the other witnesses, who were examined for proving the motive, have turned hostile and denied having knowledge of such property dispute providing a motive, the same will not in any way affect the credibility of testimonies of Pws 1 and 2. In fact, the evidence of PW25-Jeyashanmugarajan totally corroborates the evidence of Pws 1 and 2 regarding the property dispute and the previous enmity providing a motive for the occurrence. He also corroborated the evidence of PW1 regarding the incident that took place at about 06.00 am on 18.04.2010 when the accused persons brought the old household articles in a tempo to the house in which deceased Parvathiammal was residing. It is his clear testimony that the first accused wanted to put all his old household articles inside the house which was resisted by Parvathiammal, PW1 and PW25 and that at that point of time itself, the accused persons caused a threat that they would kill them. Pursuant to the prior occurrence that took place at about 06.00 am on 18.04.2010, before ever PW1 would reach the police station, the first accused Soundirapandian went in person to Thoothukudi South Police Station and lodged a complaint, which was assigned a Petition No.295 of 2010 by the then Sub-Inspector of Police, who figured as PW29. PW29, in the course of his enquiry in the said petition, recorded the statements of the first accused ~~Soundirapandian~~ and PW1-Annalakshmi. The file containing the complaint and the statements of the first accused and PW1 and the closure report has been marked as Ex.P35. On a perusal of Ex.P35



in the light of the evidence of Pws 1, 2, 25 and 29, it is quite obvious that there was a property dispute between A1-Soundirapandian and his mother Parvathiammal, which was dealt with by PW29, the Sub-Inspector of Police, Thoothukudi South Police and he, after enquiry, closed the file advising the parties to workout their remedy by approaching the civil Court. Within two days thereafter, the occurrence leading to the death of Parvathiammal happened. The accused have not even suggested that there was no such property dispute and that there was no such previous problem on 18.04.2010. On the other hand, the complaint dated 18.04.2010, which was treated as Petition No.295 of 2010 lodged by A1 Soundirapandian himself, is to the effect that he himself wanted his mother to give him permission to come and reside in the house in which she was residing in Thoothukudi, for which she agreed. However, the complaint proceeded further to state that when he went to that house taking all his household articles on 18.04.2010 morning, not only his sister Annalakshmi, but also his mother Parvathiammal prevented him from entering the house and that the same created a situation as if it would lead to a fight between them. A consideration of the contents of the said petition will make the evidence of Pws 1, 2 and 25 to the effect that without the consent of Parvathiammal, the first accused Soundirapandian brought the household articles and wanted to place them inside the house and the said attempt was resisted by them and that the same led to the lodging of a police complaint and the consequent enquiry, quite reliable. Hence, this Court comes to the conclusion that the motive alleged by the prosecution stands proved by reliable evidence and that the finding of the trial Court, in this regard, does not deserve any interference.

16. We have seen supra that the motive alleged by the prosecution stands proved. Proof of motive alone shall not be enough to prove the charges against the accused. It shall be one of several factors to be taken into consideration. While doing so, it should not be forgotten that motive is double edged weapon, which can be used in favour of the prosecution case as well as against the prosecution case. Keeping the same in mind we shall now consider the evidence of prosecution regarding the actual occurrence leading to the death of Parvathiammal, in which PW1-Annalakshmi is also said to have sustained grievous injuries and an attempt is also said to have been made on her life.

17. The occurrence is said to have taken place during the early hours, namely between 04.00 hours and 04.45 hours on 20.04.2010. As it was so early in the morning, naturally we cannot expect so many eye witnesses, who may be independent witnesses. The witnesses, who were examined by the prosecution to ~~peruse the occurrence~~ are PW1- Annalakshmi and PW25-Jeyashanmugarajan. No other witness is stated to have seen the occurrence. Though PW1's son is said to have seen part of the



occurrence and he also accompanied PW1 in the ambulance to the hospital, he was not examined as a witness on the side of the prosecution. There is no evidence either on the side of the prosecution or on the side of the accused as to what is the name of the son of PW1 and what was his age at the time of occurrence. During cross-examination of Pws 1 and 25, nothing was elicited regarding the said particulars of the son of PW1. The non-examination of the son of PW1 has not even been projected as a lacuna on the side of the prosecution. On the other hand, the learned senior counsel for the accused relied on the contention that the evidence of PW1 and PW25 could not be relied on as there are contradictions between the evidence of both. The contradictions between the evidence of PW1 and PW25 pointed out by the learned senior counsel are that, according to the testimony of PW1, PW25 was not an eyewitness, whereas PW25 projected himself to be an eyewitness for the brutal attack made on Parvathiammal and PW1; that PW1 stated in her evidence that she woke up PW25 Jeyashanmugarajan informed him that the first accused had cut her and her mother and asked him to run away from the place taking along with him the son of PW1, which will go to suggest that PW25 was asleep when she ran to the house after seeing the attack made on Parvathiammal and after she herself received the cut injuries in the hands of the Accused 1 and 2 to alert PW25 to flee that place with the son of PW1 so that they would escape the attack that could be made by the accused persons and that on the other hand, PW25 deposed to the effect that he saw the accused persons attacking Parvathiammal and PW1 and he ran towards the house only in order to escape from the accused persons and that when the accused persons reached the house chasing them he gave a slip through the back door. A comparison of the testimonies of Pws 1 and 25 in respect of the occurrence between 4.00 a.m and 04.45 am on 20.04.2010 will make it clear that, though PW25 had also gone there to the place of occurrence, the presence of PW25 was not noticed by PW1; that on seeing the accused attacking Parvathiammal and PW1, PW25 ran back to the house and only thereafter, PW1 with injuries came there and that when PW25 saw the accused entering the house, he gave a slip through the back door. The difference, if any, seen between the evidence of PW1 and PW25 will be minor difference, which cannot be stated to be a contradiction in material particulars regarding the occurrence. The variations found between the evidence of PW1 and PW25 are natural variations, which will go to show that they have not chosen to concoct anything and embellish the case of the prosecution with what they have not seen, with the aim of securing a conviction of the accused persons. The contradictions pointed by the learned senior counsel for the appellants can be neglected as insignificant and trivial in nature, which shall not have the effect of affecting the prosecution story.



18. The next contention raised by the learned senior counsel for the appellants / accused is that the prosecution failed to bring to the notice of the Court the true genesis of the case and that the earliest information regarding the occurrence came to be suppressed and in its place, a complaint obtained from PW25 after due deliberation came to be substituted. In this regard, learned senior counsel for the appellants/accused pointed out the fact that the occurrence, according to the prosecution, took place between 4.00 am and 04.45 am; that the injured witness, namely PW1 was taken to the hospital at about 05.50 a.m itself; that her dying declaration came to be recorded by the Judicial Magistrate at about 08.30 am itself and that the complaint under Ex.P31 said to have been received at 07.30 am. The learned senior counsel, adverted to the alleged admissions made by PW25 during cross-examination that the police came to the place of occurrence at 05.30 a.m itself; that they enquired him at 06.00 a.m near the place of occurrence and that he gave the complaint in writing at the place of occurrence itself at 07.30 am. Of course, during cross-examination, he made an answer that he was examined at the place of occurrence as to what happened and he gave the complaint in writing at 07.30 pm. The said answer will show that in the natural course of things, the police came to the place of occurrence and asked PW25 as to what happened; that the narrations made by him orally was not reduced to writing by the police and that when he was asked to give a statement he gave the complaint in writing. PW-30 was the Sub-Inspector of Police, who received the intimation regarding the admission of PW1 in the hospital. Her evidence is to the effect that she received the intimation at 07.15 a.m, went to the hospital and saw PW1 and that since PW2 was then receiving treatment in the said hospital, she came back to the police station without recording the statement of PW1 and handed over the intimation to the Inspector of Police. PW31, the Sub-Inspector of Police, would state that while he was in Thoothukudi South Police Station as the Station In-charge officer, PW25 Jeyashanmugarajan came there and gave the complaint, based on which Ex.P36 FIR was prepared by him and the case was registered. A comparison of the evidence of PW31 and PW25 in the chief-examination will show that both of them stated that PW25 went to the police station and lodged the complaint under Ex.P31. There is nothing to show in the endorsement found in Ex.P31 as to whether the same was obtained in the police station or in the place of occurrence. In the FIR marked as Ex.P36 also, it has been stated that the complaint was lodged by PW25-Jeyashanmugarajan, who came in person to the police station at 07.30 am on 20.04.2010. The snap answer given in the cross-examination that he gave a written complaint, following his admission that he was examined in the place of occurrence, is sought to be unduly projected as an admission that the complaint was given in writing in the place of occurrence itself. The relevant portion in the cross-examination in vernacular is extracted hereunder:



“சம்பவம் நடந்த உடன் போலீசுக்கு தகவல் தெரிவித்தார்கள் / போலீசார் 5/30 மணிக்கு வந்தனர் / நடந்த சம்பவம் பற்றி என்னிடம் கேட்டனர் / நான் கைப்பட மனு காவல் நிலையத்தில் வைத்து எழுதிக் கொடுத்தேன் / போலீசார் சம்பவ இடத்தில் வைத்து விசாரித்தனர்.”

The above said testimony will make it clear that it was his assertion that he gave written complaint in the police station at 07.30am. The further answers to the queries made in the cross-examination to the effect that he was examined by the police in the place of occurrence cannot be read conjointly with the earlier sentence, which asserts that the complaint was lodged in writing in the police station. Therefore, the contention that there is a contradiction regarding the place at which the complaint was written and handed over to the police cannot be countenanced.

19. The learned senior counsel for the accused made yet another attempt to contend that the place of complaint was not clear insofar as PW25 admitted that the police informed him to prepare a petition in writing and bring it to them and that the signature found in the petition was one made by him while he was in the Government Hospital. Of course, the same shows the way in which the learned counsel for the accused before the trial Court tried to confuse the witness PW25. The said answer alone shall not be enough to nullify his evidence in the chief-examination and also his evidence while being cross-examined by the advocate of accused 1 and 4 and also the evidence of PW1, which is also corroborated by the recitals found in Ex.P31. Therefore, the contention raised on behalf of the accused that PW25 could not be an eyewitness, has got to be discountenanced.

20. Even if it is assumed for argument sake that PW25 could not have been an eyewitness to the occurrence, the same will not lead to the inference that the prosecution story, as a whole, stands not proved and disproved. Even if the evidence of PW25 is excluded, we do have the evidence of PW1, who is not only a direct eye witness but also an injured witness. It is her clear and categorical testimony that both herself and her mother Parvathiammal went to the public tap to fetch water between 04.00 and 04.45 am on 20.04.2010; that while her mother Parvathiammal was collecting water, she was standing at a distance of 5 feet and that at that point of time, the first and second accused armed with Aruvals came there and inflicted cut injuries on Parvathiammal revealing their intention to kill her to prevent her from dividing the property and giving a share to the other children of Parvathiammal. PW1 made a clear picturisation of the incident as to how the Accused 1 and 2 cut Parvathiammal indiscriminately with Aruvals, pursuant to which she fell down. It is her clear evidence that they continued to cut Parvathiammal with Aruvals even after she fell down. It is her further testimony that besides attacking Parvathiammal, accused 1 and 2, on seeing her, came and attacked her with Aruvals, which was



prevented by her with hands resulting in her sustaining injuries in the hands; that after seeing the indiscriminate attack on her mother with Aruvals and sensing further trouble for herself and also her son, who was sleeping in the house, she ran towards the house and that she alerted PW25 and her son and requested PW25 to escape from the place by taking her son along with him so that he could be saved. It is her further statement that Accused 1 and 2 chased her, entered the house and attacked her there also and that at that point of time, on hearing the noise of someone coming, they left the place in the motorcycle in which they had come. It is also her statement that she tried to contact the police over phone and Ambulance service by dialing No.108, but her attempt to seek help from the police over phone was found to be of no effect and that at that point of time, on someone's intimation, the Ambulance came, whereupon she was taken to the hospital in the Ambulance. It is also her statement that her son accompanied her in the Ambulance. It is also her clear statement that during the occurrence, PW25 - Jeyashanmugarajan, gave slip from the place and thereafter he was seen by her only when she was taking treatment in the hospital and that at that point of time, he informed her that he had lodged a complaint with the police. The vivid description of the occurrence made by PW1, which is also reflected in her statement (Dying Declaration) recorded by the Judicial Magistrate shows that she was telling the unadulterated truth regarding how her mother and she herself were attacked by the Accused 1 and 2.

21. Though PW2 was not an eyewitness and her evidence is to the effect that she heard about the news and went to the hospital to see PW1, PW3 corroborates PW1 so far as it was he who called the ambulance and took PW1 to the hospital for treatment. PW9- Dr.Jey Ganesh is the person who admitted PW1 in the Government Hospital Thoothukudi for treatment. The following injuries were found and they were noted in Ex.P1 Accident Register:

"(1) Multiple laceration with various sizes over scalp in post aurid left region measuring 3 x 2 cm;

(2) Aro/NC 3 laceration in parieto occipital around 2 x 2 cm, 3 x 2 cm and 3 x 3 cm;

(3) Aro/NC 3 laceration wound in vertex of size 4 x 5 cm, 6 x 5 cm and 3 x 3 cm;

(4) 2 laceration wound in left back of 1x1cmx2x2 cm;

(5) Laceration wound in right dorsum of hand 5 cm length;

(6) Laceration wound in right palm 3 x 4 cm;

(7) Laceration with open fracture left forearm 2 cm below elbow joint of size 5 x 4 cm;

(8) Laceration wound left palm near thumb 2 x 3 cm

https://hcservices.ecourts.gov.in/hcservices/ ring finger 4 x 3 cm."

PW1 had informed the Medical Officer that she was attacked by two known persons with Aruvals. All the injuries found on her,



according to the evidence of PW9, could have been caused by weapons like Aruval. After taking a brief treatment in the Government Hospital Thoothukudi, PW1 was shifted to a private hospital called A.V.M.Hospital and PW10-Dr. Thangamani treated her. He also corroborated PW1 regarding the injuries found on PW1. The wound certificate issued by PW10 has been marked as Ex.P3. However, an attempt to implicate more persons seem to have been made by stating that she was attacked by four known persons with weapons made of metal, which is against the statement given to PW9 that she was attacked by two known persons with Aruvals.

22. In this regard, it is pertinent to note that even PW1 did not state that Accused 3 and 4 were armed with Aruval or any weapon made of metals. On the other hand, it is her testimony that Accused Nos.3 and 4 were armed with sticks. Hence, that part of the information given to PW10, when PW1 was admitted in the private hospital, which implicates the other two accused, namely Accused 3 and 4, has got to be disregarded as it is only an embellishment to rope-in Accused 3 and 4 also. The same will be clear from the evidence of PW23, the learned Judicial Magistrate, who recorded the dying declaration of PW1. Though PW1 mentioned about the presence of Accused Nos.3 and 4, who were standing at a distance and watching, she did not state that they were armed with any weapon. But, simply because such an attempt was made to implicate Accused 3 and 4 also, we cannot totally disregard the evidence of PW1 as unreliable and unbelievable. So far as the attacks made by Accused No.1 and 2 on Parvathiammal with Aruval and also the attack made by them on PW1, her evidence is so clear and categorical without giving any room for suspicion, much less reasonable suspicion regarding her veracity..

23. Apart from the evidence of the eye witness, there is also the evidence regarding arrest, confession containing information leading to discovery of the fact that the accused, after committing the offence, secreted the weapons, which ultimately resulted in the recovery of the weapons used for the commission of offences. The Investigating Officer, who figured as PW32, prepared Ex.P37-Observation Mahazar and Ex.P38-Rough Sketch showing the topography of the place of occurrence, wherein Parvathiammal was attacked, namely the place wherein the public tap is located near Sudalaimadasamy Temple. MO12-blood stained earth and MO13 - sample earth were also recovered by him under Ex.P39 mahazar. Initially, under Ex.P36-First Information Report, a case was registered in Crime No.285 of 2010 for offences under Sections 341, 307, 302 and 506 (ii) IPC. Subsequently, during the course of investigation PW32 altered the same into one for offence under Section 341, 302, 452, 307, 506(ii) IPC r/w.34 IPC and the evidence in this regard has been marked as Ex.P44. The second place of occurrence is the house of Parvathiammal. The Investigating Officer visited the said place of occurrence wherein PW1 was again



attacked and prepared Ex.P41-Mahazar and Ex.P42-Rough sketch. During the course of investigation, the third accused Madasamy was arrested on 22.04.2010 at 06.00 am and based on the information furnished by him in his confession statement, the admissible part of which has been marked as Ex.P13, M.O.3-Stick was allegedly recovered under Ex.P14 mahazar from the place where it had been hidden.

24. Accused Nos.1, 2 and 4 managed to escape arrest and they surrendered before the Judicial Magistrate III, Tirunelveli. PW32 applied for police custody, took them into police custody and based on the information furnished in the confession statement of Accused No.1, the admissible portion of which has been marked as Ex.P15, M.O.5-TVS Suzuki Motorcycle bearing Registration No.72-B-3023 used by the Accused 1 and 2 to escape from the scene of occurrence and MO2 - Cocktail Aruval (nfhHpthy; mUths;) were recovered. Based on the confession statement of Second Accused, the admission portion of which has been marked as Ex.P16, MO1 Aruval was recovered under Ex.P.20 mahazar and M.Os.7 and 8 shirts along with M.O.6-Polythene carry bag were recovered under Ex.P21-Mahazar. Based on the confession statement of Accused No.4, admissible portion of which has been marked as Ex.P17, M.O.4-stick was recovered under Ex.P22-Mahazar. PWs13 and 14, the witnesses examined as attestors of the observation mahazars, have turned hostile and they did not support the prosecution case. On the other hand, PW15, Village Administrative Officer, who was a witness for the arrest, confession statement of the accused persons and recovery of the material objects (sticks, Aruval, cock tail Aruval, Motorcycle and shirts) has supported the case of the prosecution. Though Mos 3 and 4 sticks were stated to have been recovered based on the confession statements of the second accused and the fourth accused respectively, it is pertinent to note that it is not the evidence of either PW1 or PW25 that the second accused was armed with a stick. However, MO3 - stick is said to have been recovered based on the confession statement of the second accused accused and MO.4 - stick was allegedly recovered based on the confession statement of fourth accused. The same, at the best, may show that all the accused could have acted with an understanding. But, it is a fact, which can be discerned from the evidence of PW1, that neither the third accused nor the fourth accused attacked either Parvathiammal or PW1 using the sticks. The entire act of attacking Parvathiammal and PW1 with Aruvals, according to her own testimony, were committed by Accused Nos.1 and 2 alone. It is not the evidence of either PW1 or PW25 that accused 3 and 4 also caused injuries to deceased Parvathiammal and those injuries caused by the accused Nos.3 and 4 along with injuries caused by the accused Nos.1 and 2 cumulatively resulted in the death of Parvathiammal. The only evidence available against them is that they were seen in the scene of occurrence holding sticks in their hands and that after the deceased Parvathiammal



fell down and died due to the brutal attack made by accused 1 and 2, accused 3 and 4 dragged her death body holding her legs. The said evidence against accused 3 and 4 is an improvement over the earlier statement made by PW1 to PW9-Medical officer in the Government Hospital. It is also pertinent to note she gave a different statement to PW10, the doctor who treated her in the private hospital, in an attempt to implicate A3 and A4 also. But in such an attempt she had stated that all the four persons were armed with weapons made of metals. A paradigm shift is seen in her evidence before the court. Hence that part of her evidence with the intention of implicating accused 3 and 4 either as co-offenders, to be punished for the murder by several persons punishable under Section 302 r/w 34 IPC or the charge against them as they abetted the commission of the offence under Section 307 IPC by accused 1 and 2 is liable to be rejected as unbelievable. The learned trial Judge has rightly held that the charge framed against A3 and A4 for the offence under Section 302 r/w 34 IPC was not proved beyond reasonable doubt and that the alleged abutment of attempt to commit murder of PW1 was also not proved beyond reasonable doubt. In respect of the other offences also, namely offences under Section 341, 307 r/w 109, 452 and 506(ii) IPC also. The learned trial Judge correctly held that the said charges against A3 and A4 were proved beyond reasonable doubt.

25. The trial Court, on a proper consideration of the evidence and also taking into an account the fact that there was no unlawful assembly since the number of the accused were below 5 and there was no possibility of holding the Accused 3 and 4 also responsible for the acts of Accused 1 and 2 as if they themselves committed the act as contemplated under Section 149 IPC, took a correct decision that the charges against the accused 3 and 4 were not proved beyond reasonable doubt. The said decision was taken based on the evidence of PW1 that neither A3 nor A4 attacked the deceased Parvathiammal or PW1.

26. However, the evidence of PW1 regarding the overt act committed by A1 and A2 is quite clear and it is also corroborated by medical evidence. The weapons recovered from them, namely MO1-Aruval and MO2-Cock-tail Aruval proved the link between the injuries sustained by the deceased leading to her death and the above said weapons. MO12-blood stained earth, MO13 - sample earth, MO-10 Jacket, MO11-skirt and MO1-Aruval were found to contain human blood stains and were found to be "O" Group human blood. Though the blood stain found in MO2-Cock-tail Aruval was found to be a human blood, its group could not be ascertained due to insufficiency of sample. The evidence of PW27, the Scientific Assistant and Ex.P33 would show that the blood group found in the ~~deceased's mouth in the~~ taken from the dead body of deceased Parvathiammal and the blood group found in MO1 - Aruval was one and the same. MO.2 was also found to contain human blood stain. The connection



between the injuries sustained by the deceased and the said material objects have been established.

27. The evidence of PW12, the doctor who conducted autopsy shows that there were 10 cut injuries and one stab injury on the lateral aspect of the right chest as noted in Ex.P6 Post-mortem certificate. Pointing out that there was a stab injury, which would suggest the use of a weapon like knife to cause the stab injury, the learned senior counsel for the accused argued that the occurrence, as projected by PW1, would not be true. But, this Court is not in a position to accept the said contention of the learned senior counsel. If a person is attacked with an aruval having a pointed tip, there is every possibility of a stab injury being caused by the tip of the Aruval. All other injuries being cut injuries will also show, while inflicting the other injuries, the 11th external injury, which is a stab injury was also caused by the tip of the Aruval. Therefore, no case for disregarding the evidence of PW1 has been made out by the accused. On the other hand, her evidence is quite natural, cogent and trustworthy.

28. In addition, she is none other than the sister of the first accused. PW25 is also the brother of the first accused. One cannot attribute a motive for them to falsely implicate their own brother in the murder of their mother. However, an attempt was made on the side of the accused to contend that PW25 was a drunkard and was having link with anti-social elements and that he could have caused the death of Parvathiammal and implicated the first accused in order to get the entire property for himself. Such a contention is nothing but a far fetched imagination than the reality. If at all, PW25 acted with such an intention, then PW25 could not have inflicted injuries on PW1, some of which are grievous in nature found in Ex.P1-Accident Register and Ex.P3-Wound Certificate. If at all the anti-social elements engaged by PW25 had attacked Parvathiammal and PW1, PW1 would not have spared PW25 and implicated her other brother, namely Accused No.1. The other contention that the alleged eye witnesses could not have seen the occurrence clearly as the occurrence allegedly took place between 04.00 a.m and 04.45 am, has been dis-spelled by the evidence of Pws 16 and 17, the employees of Tamil Nadu Electricity Board to speak to the effect that the street lights in the place of occurrence were in working condition and there was no complaint of power cut on the date of occurrence.

29. The learned senior counsel for the accused contended that the prosecution witnesses specifically admitted that in the public tap water would flow 24 hours and that therefore there was no necessity for PW1 and deceased Parvathiammal to go for taking water at odd hours, namely between 04.00 a.m and 04.45 a.m. Apart from the improbability of the deceased and PW1 having gone for taking water at odd hours, it was also improbable that the



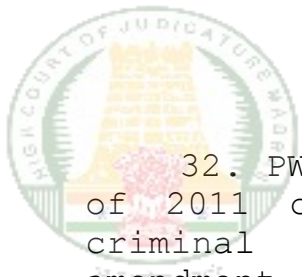
accused would have expected them to come to the public tap for collecting water at such earlier hours - learned senior counsel for the accused contended. The mere fact that water will flow in the public tap for 24 hours will not rule out the possibility of the deceased and PW1 going there for taking water in the early hours of the morning in order to avoid late-time rush. The very fact that the accused were found there at the scene of occurrence at odd hours will show, the Accused 1 and 2 knew the habit of deceased Parvathiammal and PW1 going for collecting water, which made them to go to the place of occurrence at that point of time, keeping in mind that there would be no eyewitness to the occurrence. Even otherwise, there is also the possibility of the accused coming towards the house of the deceased to attack her during odd hours in the morning and at that point of time, the deceased Parvathiammal and PW1 could have come to the water tap for collecting water. In either case, the fact remains that deceased Parvathiammal and PW1 went to the public tap near Sudalaimadasamy Temple for collecting water and at that point of time, Accused 1 and 2 armed with Aruval attacked Parvathiammal indiscriminately and caused her death instantaneously and thereafter attacked PW1 with the said weapons. However, PW1 managed to escape by running into the house of the deceased after receiving cut injuries on both the hands. It has also been proved by cogent evidence that even after she entered the house, the Accused 1 and 2, who chased her, attacked her inside the house; that by the hue and cry made by her, the attention of the neighbours, especially PW3-Velkumar was attracted and that on hearing the voice of PW3 and other persons approaching towards the second place of occurrence, Accused 1 and 2 escaped from that place.

30. The nature of injuries caused to Parvathiammal, coupled with the fact that the deceased was cut with lethal weapons indiscriminately on vital parts leading to her instantaneous death will show that such act of causing the injuries was committed with the intention of causing the death of Parvathiammal. Besides the same, there is also the evidence of PW1 that the intention of the Accused 1 and 2 was revealed by the utterances made by them during the course of the transaction leading to the death of Parvathiammal. Similar is the intention revealed by the nature of injuries and words spoken by the Accused 1 and 2 while attacking PW1. Hence, the presence of necessary animus to constitute their acts towards deceased Parvathiammal to be the culpable homicide amounting to murder and their acts towards PW1, an offence of attempt to commit murder has been proved to be present. There is no defect or infirmity in the findings of the trial Court that the Accused 1 and 2 were guilty of the offence of murder by causing the death of Parvathiammal and guilty of an offence of attempt to murder punishable under Section 307 IPC by making an attempt to kill PW1. Regarding the house trespass with the intention of



causing death also, the overt acts as well as the mental element have been established beyond reasonable doubt. The learned trial Judge, properly marshalling the evidence and, based on clear and proper appreciation of evidence, arrived at a correct conclusion that the Accused 1 and 2 were the persons who inflicted the injuries found on the deadbody of the deceased Parvathiammal; that those injuries were caused using MO1 and Mo2 Aruvals; that the injuries led to the instantaneous death of Parvathiammal and that hence, Accused 1 and 2 were guilty of the offence punishable under Section 302 IPC. The learned trial Judge also came to a correct conclusion that the accused 1 and 2 were the persons, who attacked PW1 and caused injuries found noted in Ex.P1 Accident Register and Ex.P2-Wound Certificate with the intention of causing her death and that therefore, they were guilty of the offence punishable under Section 307 IPC. In this regard, it is clarified that the overt acts of A1 and A2 towards PW1, coupled with the intention to kill her prove that A1 and A2 independently committed the offence of attempt to commit murder punishable under Section 307 IPC. However, regarding the act of causing death of Parvathiammal, the medical evidence is to the effect that the death was due to shock and haemorrhage caused by the multiple injuries inflicted on her. No single injury itself can be stated to have resulted in death. But, it is a fact established by the prosecution that both A1 and A2 acted with a common intention of causing the death of Parvathiammal and the cumulative effect of their acts of causing injuries with aruvals resulted in the death of Parvathiammal as intended by them. Under such circumstances, both A1 and A2 will be guilty of the offence of murder punishable under Section 302 IPC r/w 34 IPC. The omission to frame the charge under Section 302 r/w 34 IPC and framing the charge under Section 302 IPC alone may be only an irregularity not affecting the prosecution case. Hence the conviction of A1 and A2 by the trial court for the offence under Section 302 IPC deserves confirmation treating the same as conviction for the said offence under Section 302 IPC read with Section 34 IPC. The Court below also rendered a correct finding that the Accused 1 and 2 were guilty of the offence of house trespass after making preparation to cause hurt and thus, they were liable to be punished under Section 452 IPC.

31. So far as the punishment imposed for the said offences are concerned, they are not excessive. On the other hand, the trial Court itself seems to have shown leniency in awarding punishments for the offences under Sections 307 and 452 IPC. The learned trial Judge also has directed the sentences to run concurrently taking into account the fact that the lesser sentences awarded for the other offences would get merged with the life imprisonment imposed for the offence under Section 302 IPC. Likewise, the learned trial Judge, on a proper appreciation of evidence, rendered a correct finding that the Accused 3 and 4 were not guilty of any of the offences with which they stood charged.



32. PW25, the defacto complainant has preferred CrI.R.C.No.792 of 2011 challenging the acquittal of Accused 3 and 4. The criminal revision case came to be filed subsequent to the amendment of the Code of Criminal Procedure introducing a proviso to Section 372 Cr.P.C conferring a right on the victim of the crime to file an appeal. Despite the fact that an appeal will lie, PW25 seems to have preferred a revision. If a revision has been preferred on an erroneous belief that no appeal lies, then if the High Court is satisfied that it is necessary in the interest of justice to do so, the High Court may treat the application for revision as petition for appeal. Though the revision can be taken as one preferred on an erroneous belief that no appeal lies, since no leave under Section 378(3) has been sought for to prefer an appeal against acquittal, it shall not be proper to convert the revision into an appeal. Even otherwise, in view of the findings rendered supra in dealing with the appeal filed by Accused 1 and 2, conversion of this revision into an appeal will be a mere formality with no change in the result. Hence, this Court comes to the conclusion that the revision need not to be treated as a appeal and the same deserves dismissal.

33. Further, in the judgment reported in **AIR 1978 Supreme Court 424, (Umedbhai V. The State of Gujarat)**, it is clinchingly observed as follows:

"In an appeal against acquittal, the High Court would not ordinarily interfere with the Trial Court's conclusion unless there are compelling reasons to do so, inter alia, on account of manifest errors of law or of fact resulting in miscarriage of justice. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence."

34. In the present case also, there are no sound reasons to interfere with the judgment of the Lower Court, acquitting the accused Nos.3 and 4 and there is no illegality or impropriety in the judgment of the Lower Court acquitting the accused Nos. 3 and 4. The Revision Petitioner is, therefore, not entitled to get any relief, for the above mentioned reasons.

In the result,

i) Criminal Appeal in CrI.A.(MD) No.189/2011 is dismissed confirming the judgment of the trial court, namely Additional Sessions Judge (Fast Track Court No.1), Thoothukudi dated 27.06.2011 made in S.C.No.77 of 2011 in respect of conviction of Soundarapandian - A1 and Utchikumar - A2 (appellants in the appeal) for the offences under Sections 302 IPC, 307 IPC and 452 IPC, treating the conviction as one under Section 302 r/w 34 IPC, 307 IPC and 452 IPC and also in respect of the sentences imposed



on the accused 1 and 2. The trial court [Additional Sessions Judge (Fast Track Court No.1), Thoothukudi] is directed to secure the accused, namely Soundarapandian - A1 and Utchikumar - A2 and commit them to undergo the remaining period of sentence.

ii) Criminal Revision Case in CrI.R.C.(M.D) No.792 of 2011 is dismissed.

Sd/-

Assistant Registrar(CO Dept)I/c

/True Copy/

Sub Assistant Registrar

To

- 1)The Additional Sessions Judge, Fast Track Court No.I, Tuticorin.
- 2)The Judicial Magistrate No.I, Tuticorin
- 3)The Chief Judicial Magistrate, Tuticorin
- 4) The Inspector of Police, Tuticorin South Police Station
Tuticorin District.
- 5)The Superintendent, Central Prison, Palayamkottai
- 6)The Home Secretary, Secretariat, Fort.St.George, Chennai.
- 7)The Inspector General of Police, Mylapore, Chennai.
- 8)The District Collector, Tirunelveli
- 9)The Additional Public Prosecutor, High Court, Madurai Bench

Copy to:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai

+1cc to Mr. T.Sekar, Advocate in Sr.No.9858

asr/gpa

SH/SKS-RR/SAR-I/29.02.2016/26P-12C/

Pre-delivery Judgment in
CrI. A.(MD) No.189 of 2011 and
CrI.R.C.(MD).No.792 of 2011

19. 02.2016