

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE
Criminal Appeal No.167 of 2017

Govindaraju ...Appellant / Sole Accused

Vs.

State by
The Inspector of Police
Chidambaram Taluk Police Station
Cuddalore District.
[Crime No.253/2013]...Respondent

Appeal filed under section 374[2] of Code of Criminal Procedure, against the Judgment dated 29.01.2015 passed in.SC.No.272/2013 on the file of the learned Sessions Judge, Mahila Court, Cuddalore.

For Appellant : Mr.S.N.Arunkumar
For Respondent : Mr.R.Ravichandran,
GA[Crl.Side]

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN,
J.,]

The appellant is the sole accused in SC.No.272/2013 on the file of the learned Sessions Judge, Mahila Court, Cuddalore and he stood charged and tried for the commission of the offence under section 302 IPC. The Trial Court, vide impugned Judgment dated 29.01.2015, convicted him for the commission of the offence under section 302 [2 counts] IPC and awarded him the sentence of rigorous imprisonment for life and also imposed a fine of Rs.1,000/- for each count and in default, to undergo six months rigorous imprisonment. The Trial Court ordered the sentences to run concurrently has also granted set-off under section 428 Cr.P.C., for the period of incarceration undergone by the appellant/accused during investigation/trial.

2 The sole accused/appellant, aggrieved by the conviction and sentence awarded by the Trial Court, vide impugned Judgment dated 28.03.2017, has preferred the present criminal appeal.

3 The facts leading to the filing of this Criminal Appeal and which are necessary for the disposal of this appeal, briefly narrated, are as follows:

3.1 The deceased [D1 and D2], viz., Selvaraj and Santhi, are the parents of P.W.1, viz., Senthil. The appellant/accused is the brother of D1-Selvaraj and Senior father of P.W.1. There were ancestral properties in Kuchipalayam to an extent of 10 acres and a house in Chidambaram Punjamurthy Vinayagar Street. The landed properties were divided between three brothers which include the appellant/accused and D1, equally through an oral partition and lands admeasuring to an extent of 3 acres were allotted to each of them and out of the balance land of 1 acre, 70 cents was sold and family debts were settled and the remaining 30 cents of land allotted in favour of their mother. The appellant/accused was in enjoyment of the house property at Punjamurthy Vinayagar Street at Chidambaram. The appellant/accused told his brothers that in the said house, nobody is having a share and on account of the same, there were dispute and difference of opinion among the brothers and in that regard, the petitioner had attacked one of his brothers, viz., Thulasinathan, and he died about 10 years back. The mother of the appellant/accused who was allotted 30 cents of land, died and the deceased Selvaraj [D1] started cultivating the said land also. The appellant/accused aggrieved by the same, went to the house of D1 on 10.10.2013 at 02.00 a.m. and told his brother Selvaraj [D1] that he is going to cultivate the said land and that, he should not do anything and should not cultivate the land allotted to their mother and that the appellant/accused should only cultivate the land and wielded out a threat.

3.2 On 11.10.2013, the deceased Selvaraj and Santhi [D1 and D2] were doing agricultural operation in the land allotted to the mother of D1 and they were returning to their house and D1 was carrying a Spade. When D1 - Selvaraj and D2 - Santhi were coming near Keelnatham-Sathankudi Main Road and were approaching the Banyan Tree near South Street Junction, the appellant/accused came in the opposite side and snatched the Spade [M.O.1] from D1 and told D1 that though he had already told D1 not to cultivate the land, he is doing so and he has also not parted with the possession of the land and only if D1 is alive, he will ask for partition and that he is going on creating problem and so saying, he cut D1 - Selvaraj with the Spade [M.O.1] on the right side of his neck and it was prevented by D1 through his right hand and it fallen on the forearm of D1 and due to the effect of the injury, he became unconscious and when his wife, D2-Santhi, went there to prevent, the appellant/accused, saying that she should also

die, had cut her with M.O.1-Spade on the right side of the forehead and also on the rear side of the right side of the neck and as a consequence, she suffered bleeding injury and she also became unconscious.

3.3 P.W.1, son of both the deceased, was in the house on 11.10.2013 and he saw the occurrence at about 11.25 a.m. on 11.10.2013 and he rushed to the spot and when his father was about to fall down, he held him and at that time, he saw the appellant/accused had inflicted grievous injury on his mother with the spade and the appellant/accused also attempted to inflict injury on P.W.1 and when he tried to summon the people, the appellant/accused ran away from the scene of crime with M.O.1-Spade.

3.4 The villagers has also summoned the services of the Ambulance and P.W.1's parents were taken to the Government Hospital, Chidambaram and the doctors attached to the said hospital told P.W.1 that they were dead. Thereafter, P.W.1 proceeded to the Chidambaram Taluk Police Station and dictated the complaint and it was written by his brother, viz., Sakthivel and on going through the complaint [Ex.P.1], he signed the same and handed over it to P.W.10.

3.5 P.W.11 was the Special Sub Inspector of Police attached to the Chidambaram Taluk Police Station and on receipt of the complaint under Ex.P.1 given by P.W.1-Senthil, he took it on file and registered a case in Crime No.253/2013 u/s.302 IPC. The Printed FIR is marked as Ex.P.9. P.W.11, despatched the original complaint [Ex.P.1] and the Ex.P.9-FIR to the jurisdictional Magistrate Court.

3.6 P.W.12 was the Inspector of Police / Station House Officer of the Chidambaram Taluk Police Station at the relevant point of time and on receipt of the FIR [Ex.P.9], he took up the investigation and proceeded to the Government Hospital, Chidambaram and between 7.00 a.m. and 9.00 a.m. on 12.10.2013, he conducted inquest on the dead body of D1-Selvaraj in the presence of the Panchayatdars and the Inquest Report of D1 is marked as Ex.P.10 and between 9.15 a.m. and 11.00 a.m., he held inquest on the dead body of D2-Santhi in the presence of the Panchayatdars and the Inquest Report of D2 is marked as Ex.P.11. At about 13.00 hours on 12.10.2013, P.W.12 proceeded to the scene of crime and in the presence of P.W.9 - Village Administrative Office and the Village Menial Balasubramanian, he prepared the Observation Mahazar as well as the Rough Sketch, which are marked as Exs.P.4 and 12 respectively. At about 14.00 hours on the same day, he collected the Blood-Stained Earth [M.O.2] and the Sample Earth [M.O.3], black colour lungi [M.O.4] under the cover of Mahazar - Ex.P.5, and also collected blood stained portion of tar road [M.O.5] and sample portion of tar road [M.O.6] under the cover of Mahazar - Ex.P.6. During the course of inquest, P.W.12 examined P.Ws.1, 8, 2, 3, 4 and others and recorded their

statements u/s.161[3] Cr.P.C. P.W.12 forwarded the material objects through Form-95 to the Court of Judicial Magistrate, No.2, Chidambaram and also made a request to send the same for chemical analysis.

3.7 P.W.12 sent the dead bodies for Postmortem to the Government Kamarajar Hospital at Chidambaram and it was received by P.W.7-Dr.Lakshmi. P.W.7 commenced the Postmortem of the deceased Selvaraj at about 12.00 p.m. on 12.10.2013 and noted the following features:-

"Appearance found at the postmortem:-

A well nourished male body lies on back, eyes closed. No discharge from ears and nose. Tongue inside mouth. Teeth-intact. Mouth-closed. Hands free.

External Injuries:-

[1] Cut injury over back of right arm 10x4x2cm.

[2] Cut injury right side of neck 9x4x4cm with severe bleeding.

[3] Skin peeled off over right hand, left hand and both legs.

[4] O/D abrasion over forehead 5x3cm.

Internal Examination:-

[I] Thorax-Symmetrical ; Ribs: Intact ; Heart - All chambers empty ; Heart-congested ; Lungs -Pale. Hyoid bone - Intact ; [II] Abdomen -Stomach-watery fluid 100 ml present. Liver-Pale ; Spleen-pale ; kidneys-pale ; Intestines-Distended with gas ; Bladder-empty ; Pelvis-Intact. [III] Head:- Skull-Intact ; Membranes - Intact ; Brain - congested."

After the conclusion of the Postmortem, P.W.7 issued the Postmortem Certificate under Ex.P.3, wherein she had opined that the deceased would have died prior to 18-24 hours prior to autopsy, due to severe haemorrhage and shock due to injury to the vital organs, cut injury on the neck.

3.8 P.W.7, the doctor commenced the postmortem of D2-Santhi, at about 01.00 p.m. on 12.10.2013 and noted the following features:-

"Appearance found at the postmortem:-

A well nourished female body lies on back, eyes closed. Eyes, mouth - closed. Hands free. Hands by side.

External Injuries:-

[1] Cut injury over right side of fore head 7x2x1/2 cm.

[2] Depressed # of Right frontal bone.

[3] Cut injury over right temporal head 7x3x1 cm with severe bleeding.

[4] Cut injury back of neck 13x6x4 cm with severe bleeding.

Internal Examination:-

[I] Thorax-Symmetrical ; Ribs: Intact ; Heart - All chambers empty ; Lungs -Pale. Hyoid bone - Intact ; [II] Abdomen -Stomach-empty. Liver-Pale ; Spleen-pale ; kidneys-pale ; Intestines-Distended with gas ; Bladder-empty ; Uterus-Normal ; Pelvis-Intact. [III] Head:- # of right temporal bone ; Extra dural hemorrhage and laceration dura over the temporal region seen. Severe intra-cranial hemorrhage about 200ml present."

After the conclusion of the Postmortem, she had issued Ex.P.2- the Postmortem Certificate of the deceased Santhi, wherein she had opined that the deceased would have appeared to have died 18-36 hours prior to autopsy, due to severe Hemorrhage [intra-cranial] and external bleeding due to cut injury on the neck and cut on the head.

3.9 P.W.12 effected the arrest of the appellant/accused near Ennagaram Tasmac Shop at about 13.00 hours on 14.10.2013 and in the presence of P.W.10 and Chellamuthu, he voluntarily came forward to give a confession statement and as per the admissible portion of the confession statement, which is marked as Ex.P.7 [marked subject to objection], M.O.1-Spade was recovered near the rear side of Sathiappar temple, Kuchipalayam under the cover of Mahazar [Ex.P.8] and he also recorded the statements of P.W.10 and another. P.W.12, on 15.10.2013, examined P.W.6 and one Manikandan and recorded their statements and also submitted a requisition for subjecting M.O.1-Spade recovered on account of the admissible portion of the confession statement of the accused, for chemical analysis through the Judicial Magistrate No.1, Chidambaram, and also forwarded the said article under Form 95 to the said Court.

3.10 P.W.12, on 19.10.2013, examined the Constables as well as P.W.11 and recorded their statements and on 23.10.2013, he examined the Scientific Officer attached to the Regional Forensic Laboratory and recorded their statements. The Biological Report is marked as Ex.P.13. P.W.12 also examined P.W.7, the doctor who conducted the postmortems on the dead bodies of the deceased and recorded her statement. After completion of the investigation, he filed the Final Report/Charge Sheet on 28.10.2013 to the Court of Judicial Magistrate No.2, Chidambaram, charging the appellant/accused for the commission of the offence u/s.302 IPC.

3.11 The Court of Judicial Magistrate No.2, Chidambaram, taking the charge sheet on file in PRC No.48/2013, issued summons to the accused and on his appearance, furnished him the copies of the charge sheet and

the documents u/s.207 Cr.P.C. and having found that the case is exclusively to be tried by the Sessions Court, committed the same to the Court of the Principal Sessions Judge at Chidambaram u/s.209 Cr.P.C. The Principal Sessions Court, Chidambaram, having found that it is an offence relating to woman also, made over the case to the Mahila Court at Cuddalore, who took in on file in SC.No.272/2013.

3.12 The prosecution, in order to sustain their case, examined P.Ws.1 to 12 and marked Exs.P.1 to 13 as well as M.Os.1 to 6.

3.13 The appellant/accused was questioned under section 313[1][B] Cr.P.C., with regard to the incriminating circumstances made out against him in the evidences rendered by the prosecution and he denied it as false and also pleaded alibi on the ground that on the alleged date and time of occurrence, he was in Chidambaram. The appellant/accused did not file any documents nor let in any oral evidence.

3.14 The Trial Court, on consideration and appreciation of the oral and documentary evidences and other materials, has convicted and sentenced the appellant/accused as stated above and hence, this appeal.

4 Mr.S.N.Arunkumar, learned counsel appearing for the appellant / accused made the following submissions:-

[a] The alleged offence was committed about 11.30 hours on 11.10.2013 and whereas, the complaint under Ex.P.1 was given by P.W.1 nearly 5 ½ hours later, i.e., about 17.00 hours on 11.10.2013 and no explanation, whatsoever, has been given as to the belated lodging of the complaint though the father and mother of P.W.1, [the deceased - D1 and D2] died.

[b] The Court of Judicial Magistrate No.2, Chidambaram, lies within a very short distance from Chidambaram Taluk Police Station and however, the original complaint - Ex.P.1 and FIR - Ex.P.9 was received by the said Court at about 18.30 hours on 11.10.2013 and here again, nearly 1 ½ hours delay is there and for that also, there was no explanation on the part of the prosecution and therefore, the delay in lodging the complaint by P.W.1 and belated despatching of FIR to the Court concerned is fatal to the case of the prosecution.

[c] P.W.1 is the son of the deceased Selvaraj and Santhi and he is the blood relative and therefore, he is an

interested witness and in the light of the evidence about the motive with regard to the land dispute, his evidence cannot be taken into consideration

to convict the appellant / accused under section 302 IPC.

[d] The prosecution has projected two other witnesses as eyewitnesses, namely, P.Ws.2 and 8. P.W.2, during the course of investigation has stated that she was in the house of P.W.8 at the time of occurrence and however, the said version has not been corroborated by P.W.8. P.W.8, during the course of investigation, had told the Investigating Officer - P.W.12 that she was in her house and if it is so, she would not have seen the occurrence and as such, both testimonies cannot be believed and that apart, they made improvements during the course of their oral testimonies from that of their statements recorded during the course of investigation.

[e] The recovery of M.O.1-Spade is also highly doubtful for the reason that according to P.W.1, after committing the offence, the accused ran away from the scene of occurrence with M.O.1-Spade and whereas, P.W.8 had stated that the weapon was found in the scene of occurrence.

[f] The arrest and recovery is also highly doubtful for the reason that as per the testimony of P.W.9, when he was the Village Administrative Officer of Thenharirajapuram Village, he received the information about the murder at about 12.15 hours on 11.10.2013 and he went to the spot and he was informed that the injured were taken to the Government Hospital, Chidambaram and he was examined by P.W.12 on the next day at about 13.00 hours. P.W.12 came to the spot on 12.10.2013 and P.W.9 along with his Menial, Balasubramanian, also accompanied P.W.12. In the cross-examination, P.W.9 had deposed that on reaching the spot, immediately he telephonically contacted the Chidambaram Taluk Police Station and he was, in turn, informed that the said Police Station has already received the information and if it is so, the earliest version as to the commission of the offence and lodging of the complaint has been

totally burked and in order to fix the appellant/accused, the services of P.W.1 - son of the deceased, was used and that is why, there was a delay of nearly 5 ½ hours in lodging the complaint and 1 ½ hours in despatching the FIR.

5 In sum and substance, it is the submission of the learned counsel for the appellant / accused that the above infirmities pointed out had shaken the very foundation laid by the prosecution and the case projected by the prosecution to connect the appellant/accused with the commission of the offence, is bristled with very many infirmities and improbabilities and in any event, the Trial Court ought to have awarded benefit of doubt and acquitted the accused and prays for interference.

6 Alternately, it is pleaded by the learned counsel for the appellant / accused that as per the evidence of P.Ws.1 and 8, prior to the commission of the offence, there was a wordy altercation and even as per the version of the prosecution, the appellant/accused did not have any weapon and he merely took the Spade-M.O.1 which was in the possession of D1-Selvaraj and committed the offence and since the offence took place on account of heat of passion and due to grave and sudden provocation, the conviction and sentence impose of him may be altered accordingly.

7 Per contra, Mr.R.Ravichandran, learned Government Advocate [Cr1.Side] appearing for the State has invited the attention of this Court to the oral and documentary evidence and would submit that as regards belated lodging of the complaint under Ex.P.1, P.W.1-the son of D1 and D2 [Selvaraj and Santhi] and his immediate reaction and endeavour would be to take care of the injured persons and in normal circumstances, one cannot expect the son of the injured/deceased, to go to the Police Station and lodge a complaint and then proceed to the hospital to take care of his parents and further that the delay in lodging the complaint would not lead to the inference that the complaint is false or concocted one and P.W.1 has also not been cross-examined as regards the belated lodging of the complaint. Insofar as the delay of 1 ½ hours in despatching the FIR to the Court is concerned, the delay is very minimum and there is no specific question put to the Investigating Officer - P.W.12 as to the belated forward of the FIR and the delay itself would not lead to the inference that the FIR is anti-timed and anti-dated. It is the further submission of the learned Government Advocate [Cr1.Side] that the alleged improvements made by P.Ws.2 and 8 are only minor and trivial in nature and would add that every variation and discrepancy in the statement of the witness, cannot, per se, delay the case of the prosecution. Lastly it is submitted by the learned Government Advocate [Cr1.Side] that the testimonies of P.Ws.1, 2 and 8

corroborate with each other of all material particulars and the scientific evidence would also prove the case of the prosecution that both deceased died on account of homicidal violence and the Trial Court, on a thorough consideration and appreciation of the oral and documentary evidences, had rightly reached the conclusion to convict and sentence the appellant/accused and would plead that the conviction and sentence recorded by the Trial Court vide impugned Judgment may not warrant interference and prays for dismissal of this criminal appeal. The learned Government Advocate [Crl. Side], in support of his submissions, has placed reliance on the decisions reported in 2012 [5] SCC 724 [Kathi Bharat Vajsur and Another Vs. State of Gujarat] and 2012 [5] SCC 738 [Atmaram and Others Vs. State of Madhya Pradesh].

8 This court paid its best attention to the rival submissions and also perused the materials placed before it including the impugned judgment dated 29.01.2015.

9 The following questions arise for consideration:-

[1] Whether the testimonies of the eyewitnesses, viz., P.Ws.1, 2 and 8 are believable ? ; and

[2] Whether the reasons assigned by the Trial Court for convicting and sentencing the appellant / accused are sustainable?

Question No.1:-

10 P.W.1 is the son of the deceased, viz., Selvaraj [D1] and Santhi [D2] and as per his chief examination, there is a land dispute among the brothers, which include the appellant/accused and D1 and the land admeasuring to an extent of 30 cents was allotted to his grandmother and with regard to the enjoyment, the appellant/accused used to have altercation with his father [D1-Selvaraj]. He would further depose that on 11.10.2013, he did not attend his work as a Mason and his father and mother were returning at about 11.25 a.m. On coming to know that there was an altercation between his father, mother and his senior father - the appellant/accused, he rushed to Keelnatham-Sathankudi Main Road and saw the occurrence and when P.W.1's father to fall down, he held him and the appellant has also attacked his mother with the Spade [M.O.1] and when he went there to catch the appellant/accused, the appellant also made an attempt to attack P.W.1. P.W.1 identified M.O.1-Spade in the Court and also spoken about the lodging of the complaint under Ex.P.1. P.W.1, in the cross-examination would state that on hearing about the altercation, he went to the scene of occurrence and reached the spot within two minutes and when he proceeded to the Main Road, he was able to see the occurrence from the South Street as well as the attack inflicted by the appellant/accused on D1 [father of P.W.1]. P.W.1 would

further depose in the cross-examination that before he reached the scene of occurrence, he was not aware as to how long the altercation was going on and who instigated the said altercation first and he also deposed that about 25 minutes from the time of attack, Ambulance came and on the next day afternoon, he was examined by the Police and he proceeded to the Police Station along with his brother and lodged a complaint at about 17.00 hours on 11.10.2013 and he denied the suggestion with regard to the frequent altercation between the appellant/accused and his father [D1], he did not state so at the time of his examination and denied the suggestion that the appellant/accused is nothing to do with the commission of the offence.

11 P.W.2 is another eyewitness and she knows the deceased persons as well as the appellant/accused and in her chief examination, she would depose that on Friday of the Tamil Month of Purattasi at about 11.30 a.m. for the purpose of having food, she went from South to North and at that time, both the deceased were coming near the Banyan Tree and the appellant/accused had wordy altercation with regard to the land given to the mother of the appellant/accused and D1 and D1-Selvaraj told the appellant/accused that he is not willing to part with the possession of the said land and immediately the appellant/accused took the Spade [M.O.1] from D1 and cut him on his neck thrice and when P.W.1's mother [D2] raised alarm, the appellant/accused attacked her on her forehead. P.W.2, in her cross-examination would depose that the incident took place about 10 feet away from the Banyan Tree and she saw the occurrence from and near the house of Jayaram and while, examination by the police, she told them that she was proceeding to do coolie work and that the altercation between the accused/appellant and D1 took place for about half-an-hour. P.W.2 would further depose that with regard to the demand made by the appellant/accused to part with the possession of the land, she did not state so, while she was examined by the police. सत्यमेव जयते

12 P.W.8-Vasantha was the yet another eyewitness and as per her chief examination, she knew the appellant/accused as well as the deceased persons and on the date of occurrence, she was in her house at about 11.00 a.m., and Selvaraj and Santhi [D1 and D2] were proceeding towards North and when they were nearing the Banyan tree, the appellant/accused was coming on the opposite side and sometime thereafter, there was a wordy altercation D1 was holding a Spade [M.O.1] and D2 was having aruval to cut grass and the appellant/accused took the Spade from D1 and attacked him and when D2 tried to prevent the appellant from doing so, he also attacked her. In the cross-examination, P.W.8 would state that when she saw the occurrence, the appellant/accused as well as the deceased were having wordy altercation and it went on for nearly 10 minutes and she has witnessed the occurrence from the distance of 10 or 15 feet. P.W.8 would depose

further that if she was in her house, she may not be aware of the reasons for altercations.

13 P.W.11 was the Special Sub-Inspector of Police attached to the Chidambaram Taluk Police Station and he received the FIR under Ex.P.9 based on Ex.P.1-complaint given by P.W.1. P.W.11 in the cross-examination would depose that he was not aware of the telephonic information given by P.W.9-Village Administrative Officer at about 12.00 Noon on 11.10.2013 and would further depose that prior to the information given by P.W.9, the villagers of Kuchipalayam has informed the Police Station. P.W.11 would further depose that P.W.1 had lodged the complaint at about 5.00 p.m. on 11.10.2013 and in the FIR, he has stated that there is no delay in lodging the complaint and despatched the FIR at about 6.30 p.m., after a delay of 1 ½ hours. P.W.11 would admit that when the information is received through telephonically, it should be recorded in the General Diary and denied the suggestion that the earlier information given by P.W.9 and the villagers, have been suppressed and on the advice of the higher officials, the earlier complaint/information was burked.

14 P.W.12, the Investigating Officer, in the cross-examination would depose that during the course of investigation, he found that near the scene of occurrence, altercation started and P.W.1, during the course of investigation had stated that he held his father [D1] immediately after the attack inflicted by the appellant/accused and he did not state about the threat made by the appellant/accused to attack him. P.W.12 would further depose that P.Ws.2 and 8 during the course of investigation had stated that both of them were in the house of P.W.8 and P.W.2 in her statement recorded under section 161[3] Cr.P.C., did not state about coming out for the purpose of having food and P.W.8 in her statement, did not state that on hearing the alarm/sound, she came out of her house. P.W.12 would further depose that P.W.2, in her statement, would state that at the time of the occurrence, she and P.W.8 developed fear and concealed themselves near the fence. P.W.12 would further deny the suggestion as to the lodging of the earlier complaint by P.W.9 and the resident of the village.

15 The prosecution projects P.Ws.1, 2 and 8 as eyewitnesses and as regards motive, apart from examining P.W.1, also examined P.W.3, 4 and 6. A perusal of the testimonies of P.Ws.3, 4 and 6 as well as P.W.1 would reveal that there was an earlier partition among the brothers and a portion of the land was allotted in favour of their mother and after her demise, it was in the possession of D1-Selvaraj and on account of the same, there was enmity between the appellant/accused and D1.

16 It is the categorical testimony of P.W.1 that he had heard about the altercation between his senior father -

the appellant/accused and his father [D1] and when he went out, he saw the attack inflicted by the appellant/accused upon his father [D1] and he went and held him and at that time, the appellant/accused also attacked his mother [D2]. The said crucial and material portion of the evidence of P.W.1 has been corroborated by the evidences of P.Ws.2 and 8. It is the submission of the learned counsel appearing for the appellant that in the light of the fact that P.Ws.2 and 8 did not say anything about the going out for having food and staying in the house and further that if P.Ws.2 and 8 were together in the house of P.W.8, they would not have been possible for them to witness the occurrence and some contradictions were also elicited through the testimony of P.W.12-Investigating Officer.

17 It is to be pointed out at this juncture that the witnesses hail from a rural place and have rural background and they were examined nearly one year from the date of the commission of the occurrence. Therefore, there are bound to be some omissions or contradictions. If the witnesses depose with graphic details, then it may be said that they have given the parrot version of the occurrence and it would not be possible to remember the exact details. The Hon'ble Supreme Court of India in the decision reported in AIR 1988 SC 696 [Appabhai and Another V. State of Gujarat], has considered the issue relating to the contradiction in the evidence and in paragraph 13, observed that "the Court, while appreciating the evidence must not attach undue importance to the discrepancies. The discrepancies, which do shake the basic version of the prosecution case, may be discarded. The discrepancies which are due to normal errors of perception or observation, should not be given importance. Errors due to the lapse of memory, may be given due allowance..... when a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only, unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses no doubt, go on adding embellishments to their versions, perhaps on the fear of their testimonies being rejected by the Court. The Court, however should not disbelieve the evidence of such witnesses altogether if they are otherwise trust-worthy."

18 In the case on hand, apart from the testimony of P.W.1, who is the son of the deceased persons, two other witnesses, viz., P.Ws.2 and 8 were also examined who happened to be the chance witnesses. In AIR 1988 SC 1988 [State of Uttar Pradesh Vs. Anil Singh], it is held that "the testimonies of the witnesses figured as eyewitnesses, if corroborated by another eyewitness, they cannot be categorized as chance witnesses." Even for the sake of arguments that the testimonies of P.Ws.2 and 8 cannot be believed and the testimony of P.W.1 requires corroboration, the Hon'ble Supreme Court in the decision reported in 1996 SC [Crl.] 657 [Pattu Lal Vs. State of Punjab], in paragraph 6 has observed that

"...the evidenciary value of deposition which is otherwise admissible, is not just wiped out in the absence of corroboration. Even in the absence of corroboration, a deposition for its quality, may be safely accepted to be correct."

19 The primordial submission of the learned counsel for the appellant that in the light of the improvements made by P.Ws.2 and 8 during the course of their oral evidences, there are very many contradictions exist in their testimonies, they cannot be said to be the witnesses corroborating the evidence of P.W.1 and therefore, it should be totally eschewed from consideration. In the considered opinion of the Court, though there are improvements in the testimonies of P.Ws.2 and 8, insofar witnessing the commission of the offence, more particularly, with regard to the overt act on the part of the appellant/accused to do away with the lives of the deceased [D1 and D2] the testimonies of P.Ws. 2 and 8 corroborate with the testimony of P.W.1.

20 In the decision reported in 2000 [1] SCC 247 [State of Himachal Pradesh Vs. Lekh Raj and another], the Hon'ble Apex Court, in paragraph 8, has observed that "there are bound to be discrepancies between the narrations of different witnesses when they speak of details, and unless contradictions are of a material dimension, the same should not be use to jattisan the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be accepted in criminal cases. Minor embellishments, there may be, but variations by reason, therefore, should not render the evidence of the eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence." Therefore, this Court is of the considered view that the testimony of P.W.1 is amply corroborated by the testimonies of P.Ws.2 and 8 on all material particulars, viz., as to the overt act on the part of the appellant/accused. The motive has also been proved through the testimonies of P.Ws. 1, 3, 4 and 6.

21 The yet another submission made by the learned counsel for the appellant is with regard to the belated lodging of the complaint under Ex.P.1 by P.W.1 and that the earlier complaint given by P.W.9-Village Administrative Officer and the residents of the village have been burked. This Court has already observed that the minimum concern of P.W.1 who is the son of the deceased, is to save the lives of his parents and a person in such a state of mind is not expected to go to the police station to lodge a

complaint immediately. Insofar as burking/suppressing of the earlier complaint pleaded by the learned counsel for the appellant, P.W.11 has categorically stated that he was not aware of the telephonic information received from P.W.9 - Village Administrative Officer as well as from the villagers,

though he would admit that in the event of any telephonic information received with regard to any occurrence, it should be entered in the General Diary. Further P.W.11-the Investigating Officer has also denied the suggestion in that regard and the General Diary has also not been summoned for the purpose of confronting P.W.11.

22 The Postmortem Reports marked as Exs.P.2 and 3 coupled with the testimony of P.W.7-Doctor who conducted the autopsies would support the case of the prosecution and the deceased [D1 and D2] died on account of the injuries inflicted on them. The Biological Report marked as Ex.P.13, would also disclose that blood was found on M.O.1-Spade which was used for the commission of the offence. It is also a well settled position of law that even if the case of the prosecution rests on the ocular testimony and thereby, the motive would pale into significance against the accused. But in the case on hand, the prosecution has not only proved the motive for the commission of the offence on account of the long standing land dispute, but also proved the fatal overt act on the part of the appellant/accused through the oral and documentary evidences.

23 The learned counsel for the appellant has also pointed out discrepancy as to the recovery of the weapon for the reason that P.W.8 had stated that the weapon was found in the place of occurrence ; whereas, P.W.10, the witness to the arrest and recovery would state that M.O.1-Spade was recovered from the rear side of the Kuchipalayam Sathiyappar Temple. A perusal of the sketch marked as Ex.P.12 would disclose that the distance is not much and the evidence of P.W.1 is also to the effect that after committing the offence, the appellant/accused from the scene of occurrence with the weapon. The recovery of weapon has also been amply proved by the prosecution and the Biological Report marked as Ex.P.13 would also disclose that it was tainted with human blood. Hence, this Court finds no reasons to disbelieve the arrest and recovery of the accused and the weapon.

24 The learned counsel for the appellant also alternately pleaded for alteration in conviction and reduction of sentence. No doubt, the witnesses, viz., P.Ws.1 and 2 speak about the wordy altercation. P.W.1 says that it went on for half-an-hour and P.W.2 says that it went on for ten minutes. It is to be remembered at this juncture that the deceased persons after finishing their field work, were returning and they were confronted by the appellant/accused and the accused took the spade [M.O.1] which was in the possession of D1 and attacked the parents of P.W.1 and as a consequence, both of them died on the spot and as such, it cannot be said the case would fall under Exception 4 to Section 300 IPC. The evidence of P.W.1 would also disclose that apart from him, two other sons who are younger to him, were also born to the deceased and he himself at the time of

the commission of the offence, was aged about 22 years and all of them had lost their parents at their young age and as such, this Court feels that it is not a fit case where alteration of conviction and reduction of sentence of imprisonment is required.

Question No.2:-

25 In the considered opinion of the Court, the reason assigned by the Trial Court for convicting and sentencing the appellant / accused for the commission of the offence under section 302 [2 counts] IPC are sustainable and no error or infirmity is noted in the impugned judgment.

26 In the result, the criminal appeal is dismissed and the conviction and sentence awarded by the learned Sessions Judge, Mahila Court, Cuddalore, in SC.No.272/2013, vide impugned judgment dated 29.01.2015, are hereby confirmed.

27 It is made clear that the period of incarceration undergone by the appellant / accused during the course of investigation / trial is ordered to be set-off under section 428 Cr.P.C.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

AP
To

- 1.The Sessions Judge,
Mahila Court, Cuddalore
- 2.The Principal District and Sessions Judge,
Cuddalore District.
- 3.The Judicial Magistrate No.2
Chidambaram.
- 4.The Chief Judicial Magistrate
Chidambaram.
- 5.The Superintendent,
Central Prison, Cuddalore.
- 6.The Inspector of Police
Chidambaram Taluk Police Station
Cuddalore District.

7.The Director General of Police
Mylapore, Chennai-4.

8.The District Collector,
Cuddalore District.

9.The Public Prosecutor
High Court, Madras.

+lcc to M/s.C.Ramkumar, Advocate SR.No.79973

Crl.A.No.167/2017

NRI (CO)
sm:6.12.2017



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